

62A-4a-101. Definitions.

As used in this chapter:

- (1) "Abuse" is as defined in Section 78A-6-105.
- (2) "Adoption services" means:
 - (a) placing children for adoption;
 - (b) subsidizing adoptions under Section 62A-4a-105;
 - (c) supervising adoption placements until the adoption is finalized by the court;
 - (d) conducting adoption studies;
 - (e) preparing adoption reports upon request of the court; and
 - (f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.
- (3) "Child" means, except as provided in Part 7, Interstate Compact on Placement of Children, a person under 18 years of age.
- (4) "Consumer" means a person who receives services offered by the division in accordance with this chapter.
- (5) "Chronic abuse" means repeated or patterned abuse.
- (6) "Chronic neglect" means repeated or patterned neglect.
- (7) "Custody," with regard to the division, means the custody of a minor in the division as of the date of disposition.
- (8) "Day-care services" means care of a child for a portion of the day which is less than 24 hours:
 - (a) in the child's own home by a responsible person; or
 - (b) outside of the child's home in a:
 - (i) day-care center;
 - (ii) family group home; or
 - (iii) family child care home.
- (9) "Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.
- (10) "Director" means the director of the Division of Child and Family Services.
- (11) "Division" means the Division of Child and Family Services.
- (12) "Domestic violence services" means:
 - (a) temporary shelter, treatment, and related services to:
 - (i) a person who is a victim of abuse, as defined in Section 78B-7-102; and
 - (ii) the dependent children of a person described in Subsection (12)(a)(i); and
 - (b) treatment services for a person who is alleged to have committed, has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.
- (13) "Harm" is as defined in Section 78A-6-105.
- (14) "Homemaking service" means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.
- (15) "Incest" is as defined in Section 78A-6-105.
- (16) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of Children:

- (a) a child; or
- (b) a person:
 - (i) who is at least 18 years of age and younger than 21 years of age; and
 - (ii) for whom the division has been specifically ordered by the juvenile court to provide services.
- (17) "Molestation" is as defined in Section 78A-6-105.
- (18) "Natural parent" means a minor's biological or adoptive parent, and includes a minor's noncustodial parent.
- (19) "Neglect" is as defined in Section 78A-6-105.
- (20) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the earlier of:
 - (a) the shelter hearing; or
 - (b) the child's return home.
- (21) "Protective services" means expedited services that are provided:
 - (a) in response to evidence of neglect, abuse, or dependency of a child;
 - (b) to a cohabitant who is neglecting or abusing a child, in order to:
 - (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and
 - (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
 - (c) in cases where the child's welfare is endangered:
 - (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;
 - (ii) to cause a protective order to be issued for the protection of the child, when appropriate; and
 - (iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:
 - (A) removal from the child's home;
 - (B) placement in substitute care; and
 - (C) petitioning the court for termination of parental rights.
- (22) "Severe abuse" is as defined in Section 78A-6-105.
- (23) "Severe neglect" is as defined in Section 78A-6-105.
- (24) "Sexual abuse" is as defined in Section 78A-6-105.
- (25) "Sexual exploitation" is as defined in Section 78A-6-105.
- (26) "Shelter care" means the temporary care of a minor in a nonsecure facility.
- (27) "State" means:
 - (a) a state of the United States;
 - (b) the District of Columbia;
 - (c) the Commonwealth of Puerto Rico;
 - (d) the Virgin Islands;
 - (e) Guam;
 - (f) the Commonwealth of the Northern Mariana Islands; or
 - (g) a territory or possession administered by the United States.
- (28) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

(29) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(30) "Substance abuse" is as defined in Section 78A-6-105.

(31) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

(32) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;

(b) services provided for a minor awaiting placement; and

(c) the licensing and supervision of a substitute care facility.

(33) "Supported" means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.

(34) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

(35) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

(36) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

(37) "Unsupported" means a finding at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division worker did not conclude that the allegation was without merit.

(38) "Without merit" means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

Amended by Chapter 75, 2009 General Session

62A-4a-102. Policy responsibilities of division.

(1) The Division of Child and Family Services, created in Section 62A-4a-103, is responsible for establishing policies for the division, by rule, under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act of 1996, regarding abuse, neglect, and dependency proceedings, and domestic violence services. The division is responsible to see that the legislative purposes for the division are carried out.

(2) The division shall:

- (a) approve fee schedules for programs within the division;
- (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish, by rule, policies to ensure that private citizens, consumers, foster parents, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision of an existing policy; and
- (c) provide a mechanism for:
 - (i) systematic and regular review of existing policies, including an annual review of all division policies to ensure that policies comply with the Utah Code; and
 - (ii) consideration of policy changes proposed by the persons and agencies described in Subsection (2)(b).
- (3) (a) The division shall establish rules for the determination of eligibility for services offered by the division in accordance with this chapter.
- (b) The division may, by rule, establish eligibility standards for consumers.
- (4) The division shall adopt and maintain rules regarding placement for adoption or foster care that are consistent with, and no more restrictive than, applicable statutory provisions.

Amended by Chapter 293, 2012 General Session

62A-4a-103. Division -- Creation -- Purpose.

- (1) (a) There is created the Division of Child and Family Services within the department, under the administration and general supervision of the executive director.
- (b) The division is the child, youth, and family services authority of the state and has all functions, powers, duties, rights, and responsibilities created in accordance with this chapter, except those assumed by the department.
- (2) (a) The primary purpose of the division is to provide child welfare services.
- (b) The division shall, when possible and appropriate, provide in-home services for the preservation of families in an effort to protect the child from the trauma of separation from his family, protect the integrity of the family, and the constitutional rights of parents. In keeping with its ultimate goal and purpose of protecting children, however, when a child's welfare is endangered or reasonable efforts to maintain or reunify a child with his family have failed, the division shall act in a timely fashion in accordance with the requirements of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, to provide the child with a stable, permanent environment.
- (3) The division shall also provide domestic violence services in accordance with federal law.

Amended by Chapter 265, 2014 General Session

62A-4a-104. Director of division -- Qualifications.

- (1) The director of the division shall be appointed by the executive director.
- (2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in the areas of child

and family services, including child protective services, family preservation, and foster care.

- (3) The director is the administrative head of the division.

Amended by Chapter 75, 2009 General Session

62A-4a-105. Division responsibilities.

- (1) The division shall:
 - (a) administer services to minors and families, including:
 - (i) child welfare services;
 - (ii) domestic violence services; and
 - (iii) all other responsibilities that the Legislature or the executive director may assign to the division;
 - (b) provide the following services:
 - (i) financial and other assistance to an individual adopting a child with special needs under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the child as a legal ward of the state;
 - (ii) non-custodial and in-home services, including:
 - (A) services designed to prevent family break-up; and
 - (B) family preservation services;
 - (iii) reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;
 - (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;
 - (v) shelter care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;
 - (vi) domestic violence services, in accordance with the requirements of federal law;
 - (vii) protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;
 - (viii) substitute care for dependent, abused, neglected, and delinquent children;
 - (ix) programs and services for minors who have been placed in the custody of the division for reasons other than abuse or neglect, under Section 62A-4a-250;
 - (x) services for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Section 76-10-1302; and
 - (xi) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;
 - (c) establish standards for all:
 - (i) contract providers of out-of-home care for minors and families;
 - (ii) facilities that provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division; and
 - (iii) direct or contract providers of domestic violence services described in

Subsection (1)(b)(vi);

(d) have authority to:

(i) contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

(ii) approve facilities that meet the standards established under Subsection (1)(c) to provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division;

(e) cooperate with the federal government in the administration of child welfare and domestic violence programs and other human service activities assigned by the department;

(f) in accordance with Subsection (2)(a), promote and enforce state and federal laws enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state;

(g) cooperate with the Employment Development Division in the Department of Workforce Services in meeting the social and economic needs of an individual who is eligible for public assistance;

(h) compile relevant information, statistics, and reports on child and family service matters in the state;

(i) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118;

(j) provide social studies and reports for the juvenile court in accordance with Section 78A-6-605;

(k) within appropriations from the Legislature, provide or contract for a variety of domestic violence services and treatment methods;

(l) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who:

(i) have a permanency goal of adoption; or

(ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314, and promote adoption of those children;

(m) subject to Subsection (2)(b), refer an individual receiving services from the division to the local substance abuse authority or other private or public resource for a court-ordered drug screening test; and

(n) perform other duties and functions required by law.

(2) (a) In carrying out the requirements of Subsection (1)(f), the division shall:

(i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and with all public and private licensed child welfare agencies and institutions, to develop and administer a broad range of services and support;

(ii) take the initiative in all matters involving the protection of abused or neglected children, if adequate provisions have not been made or are not likely to be made; and

(iii) make expenditures necessary for the care and protection of the children described in this Subsection (2)(a), within the division's budget.

(b) When an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (1)(n), the court shall order the individual to pay all costs of the tests unless:

(i) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

(ii) the individual is a participant in a drug court; or

(iii) the court finds that the individual is impecunious.

(3) Except to the extent provided by rule, the division is not responsible for investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

(4) The division may not require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo.

Amended by Chapter 140, 2014 General Session

Amended by Chapter 265, 2014 General Session

62A-4a-105.5. Employees -- Failure to comply with policy -- Termination.

(1) The director shall ensure that all employees are fully trained to comply with state and federal law, administrative rules, and division policy in order to effectively carry out their assigned duties and functions.

(2) If, after training and supervision, the employee consistently fails to comply with those laws, rules, and policies, his employment with the division shall be terminated.

Enacted by Chapter 260, 1994 General Session

62A-4a-106. Services provided by division.

(1) The division may provide, directly or through contract, services that include the following:

(a) adoptions;

(b) day care for children;

(c) out-of-home placements for minors;

(d) health-related services;

(e) homemaking services;

(f) home management services;

(g) protective services for minors;

(h) transportation services; and

(i) domestic violence services.

(2) Services provided directly by the division or through contract shall be monitored by the division to insure compliance with applicable:

(a) state law; and

(b) standards and rules of the division.

(3) When the division provides a service through a private contract, not including a foster parent placement, the division shall post the name of the service

provider on the division's website.

Amended by Chapter 290, 2012 General Session

**62A-4a-107. Mandatory education and training of caseworkers --
Development of curriculum.**

(1) There is created within the division a full-time position of Child Welfare Training Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee in that position is not responsible for direct casework services or the supervision of those services, but is required to:

- (a) develop child welfare curriculum that:
 - (i) is current and effective, consistent with the division's mission and purpose for child welfare; and
 - (ii) utilizes curriculum and resources from a variety of sources including those from:
 - (A) the public sector;
 - (B) the private sector; and
 - (C) inside and outside of the state;
- (b) recruit, select, and supervise child welfare trainers;
- (c) develop a statewide training program, including a budget and identification of sources of funding to support that training;
- (d) evaluate the efficacy of training in improving job performance;
- (e) assist child protective services and foster care workers in developing and fulfilling their individual training plans;
- (f) monitor staff compliance with division training requirements and individual training plans; and
- (g) expand the collaboration between the division and schools of social work within institutions of higher education in developing child welfare services curriculum, and in providing and evaluating training.

(2) (a) The director shall, with the assistance of the child welfare training coordinator, establish a core curriculum for child welfare services that is substantially equivalent to the Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

(b) Any child welfare caseworker who is employed by the division for the first time after July 1, 1999, shall, before assuming significant independent casework responsibilities, successfully complete:

- (i) the core curriculum; and
- (ii) except as provided in Subsection (2)(c), on-the-job training that consists of observing and accompanying at least two capable and experienced child welfare caseworkers as they perform work-related functions:
 - (A) for three months if the caseworker has less than six months of on-the-job experience as a child welfare caseworker; or
 - (B) for two months if the caseworker has six months or more but less than 24 months of on-the-job experience as a child welfare caseworker.

(c) A child welfare caseworker with at least 24 months of on-the-job experience

is not required to receive on-the-job training under Subsection (2)(b)(ii).

(3) Child welfare caseworkers shall complete training in:

(a) the legal duties of a child welfare caseworker;
(b) the responsibility of a child welfare caseworker to protect the safety and legal rights of children, parents, and families at all stages of a case, including:

(i) initial contact;

(ii) investigation; and

(iii) treatment;

(c) recognizing situations involving:

(i) substance abuse;

(ii) domestic violence;

(iii) abuse; and

(iv) neglect; and

(d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of the United States to the child welfare caseworker's job, including:

(i) search and seizure of evidence;

(ii) the warrant requirement;

(iii) exceptions to the warrant requirement; and

(iv) removing a child from the custody of the child's parent or guardian.

(4) The division shall train its child welfare caseworkers to apply the risk assessment tools and rules described in Subsection 62A-4a-1002(2).

(5) The division shall use the training of child welfare caseworkers to emphasize:

(a) the importance of maintaining the parent-child relationship whenever possible;

(b) the preference for providing in-home services over taking a child into protective custody, both for the emotional well-being of the child and the efficient allocation of resources; and

(c) the importance and priority of:

(i) kinship placement in the event a child must be taken into protective custody; and

(ii) guardianship placement, in the event the parent-child relationship is legally terminated and no appropriate adoptive placement is available.

(6) When a child welfare caseworker is hired, before assuming significant independent casework responsibilities, the child welfare caseworker shall complete the training described in Subsections (3) through (5).

Amended by Chapter 171, 2013 General Session

62A-4a-107.5. Private recruitment and training of foster care parents and child welfare volunteers -- Extension of immunity.

(1) The division may contract with one or more private, nonprofit organizations to recruit and train foster care parents and child welfare volunteers on a statewide or regional basis.

(2) An organization that contracts with the division pursuant to Subsection (1)

shall agree to:

(a) increase the number of licensed and trained foster care parents in the geographic area covered by:

- (i) developing a strategic plan;
- (ii) assessing the needs, perceptions, and qualities of potential foster care parents;
- (iii) assessing the needs, perceptions, and qualities of children in state custody;
- (iv) identifying potential foster care parents through public and private resources;

(v) screening foster care parent applicants;

(vi) providing preservice, ongoing, and customized training to foster care parents;

(vii) developing a competency-based training curriculum with input from public and private resources and approved by the division;

(viii) focusing training exercises on skill development; and

(ix) supporting foster care parents by supplying staff support, identifying common issues, encouraging peer support, and connecting available resources;

(b) increase the number of child welfare volunteers in the geographical area covered by:

- (i) developing a strategic plan;
- (ii) seeking the participation of established volunteer organizations;
- (iii) designing and offering initial orientation sessions to child welfare volunteers;

(iv) informing volunteers of options for service as specified by the division; and

(v) facilitating the placement and certification of child welfare volunteers;

(c) coordinate efforts, where appropriate, with the division;

(d) seek private contributions in furtherance of the organization's activities under this Subsection (2);

(e) perform other related services and activities as may be required by the division; and

(f) establish a system for evaluating performance and obtaining feedback on the activities performed pursuant to this Subsection (2).

(3) Notwithstanding Subsection (2), the department shall retain ultimate authority over and responsibility for:

(a) initial and ongoing training content, material, curriculum, and techniques, and certification standards used by an organization; and

(b) screening, investigation, licensing, certification, referral, and placement decisions with respect to any person recruited or trained by an organization.

(4) (a) An organization under contract with the department and its directors, trustees, officers, employees, and agents, whether compensated or not, may not be held civilly liable for any act or omission on a matter for which the department retains ultimate authority and responsibility under Subsection (3).

(b) Nothing in Subsection (4)(a) may be construed as altering the abuse and neglect reporting requirements of Section 62A-4a-403, regardless of whether the facts that give rise to such a report occur before or after a screening, investigation, licensing,

or placement decision of the department.

(5) A referring entity or a referring individual that voluntarily and without remuneration assists the organization to identify and recruit foster care parents or child welfare volunteers is not liable in any civil action for any act or omission of:

(a) the referring entity or the referring individual, which is performed in good faith and in furtherance of the entity's assistance to the organization; or

(b) any person directly or indirectly referred to the organization by the entity as a foster care parent or child welfare volunteer, if the referring individual was without actual knowledge of any substantiated fact that would have disqualified the person from such a position at the time the referral was made.

(6) As used in this section:

(a) "referring entity" means:

(i) an incorporated or unincorporated organization or association whether formally incorporated or otherwise established and operating for religious, charitable, or educational purposes which does not distribute any of its income or assets to its members, directors, officers, or other participants;

(ii) any organization which is described in Section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from tax under Section 501 of the Internal Revenue Code; or

(iii) any not-for-profit organization which is formed and conducted for public benefit and operated primarily for charitable, civic, educational, religious, benevolent, welfare, or health purposes; and

(b) "referring individual" means an individual:

(i) with the authority to act on behalf of a referring entity in making a referral; and

(ii) who may or may not be compensated by the referring entity.

Amended by Chapter 299, 2008 General Session

62A-4a-109. Eligibility -- Fee schedules.

(1) The division may establish, by rule, eligibility standards for consumers.

(2) The division shall assess a fee for services that it provides in accordance with this chapter, based on the fee schedule approved in accordance with Section 62A-4a-102.

Amended by Chapter 75, 2009 General Session

62A-4a-110. Receipt of gifts -- Volunteer services.

(1) The division may receive gifts, grants, devises, and donations. These gifts, grants, devises, donations, or their proceeds shall be credited to the program which the donor designates and may be used for the purposes requested by the donor, if the request conforms to state and federal policy. If a donor makes no specific request, the division may use the gift, grant, devise, or donation for the best interest of the division.

(2) The division may:

(a) accept and use volunteer labor or services of applicants, recipients, and

other members of the community. The division may reimburse volunteers for necessary expenses, including transportation, and provide recognition awards and recognition meals for services rendered. The division may cooperate with volunteer organizations in collecting funds to be used in the volunteer program. Those donated funds shall be considered as private, nonlapsing funds until used by the division, and may be invested under guidelines established by the state treasurer;

(b) encourage merchants and providers of services to donate goods and services or to provide them at a nominal price or below cost;

(c) distribute goods to applicants or consumers free or for a nominal charge and tax free; and

(d) appeal to the public for funds to meet applicants' and consumers' needs which are not otherwise provided for by law. Those appeals may include Sub-for-Santa Programs, recreational programs for minors, and requests for household appliances and home repairs, under rules established by the division.

Amended by Chapter 75, 2009 General Session

62A-4a-111. Fraudulently obtained services -- Recovery.

If it is discovered that a person is fraudulently obtaining, or has fraudulently obtained, services offered by the division in accordance with this chapter, the division shall take all necessary steps, including legal action through the attorney general, to recover all money or the value of services fraudulently obtained. The division may establish an agreement with the Office of Recovery Services to fulfill the requirements of this section.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-112. Request to examine family services payment.

(1) An individual who is a taxpayer and resident of this state and who desires to examine a payment for services offered by the division in accordance with this chapter, shall sign a statement using a form prescribed by the division. That statement shall include the assertion that the individual is a taxpayer and a resident, and shall include a commitment that any information obtained will not be used for commercial or political purposes. No partial or complete list of names, addresses, or amounts of payment may be made by any individual under this subsection, and none of that information may be removed from the offices of the division.

(2) The division shall, after due consideration of the public interest, define the nature of confidential information to be safeguarded by the division and shall establish policies and rules to govern the custody and disclosure of confidential information, as well as to provide access to information regarding payments for services offered by the division.

(3) This section does not prohibit the division or its agents, or individuals, commissions, or agencies duly authorized for the purpose, from making special studies or from issuing or publishing statistical material and reports of a general character. This section does not prohibit the division or its representatives or employees from

conveying or providing to local, state, or federal governmental agencies written information that would affect an individual's eligibility or ineligibility for financial service, or other beneficial programs offered by that governmental agency. Access to the division's program plans, policies, and records, as well as consumer records and data, is governed by Title 63G, Chapter 2, Government Records Access and Management Act.

(4) Violation of this section is a class B misdemeanor.

Amended by Chapter 75, 2009 General Session

62A-4a-113. Division's enforcement authority -- Responsibility of attorney general to represent division.

(1) The division shall take legal action that is necessary to enforce the provisions of this chapter.

(2) (a) Subject to the provisions of Section 67-5-17, the attorney general shall enforce all provisions of this chapter, in addition to the requirements of Title 78A, Chapter 6, Juvenile Court Act of 1996, relating to protection and custody of abused, neglected, or dependent minors. The attorney general may contract with the local county attorney to enforce the provisions of this chapter and Title 78A, Chapter 6, Juvenile Court Act of 1996.

(b) It is the responsibility of the attorney general's office to:

(i) advise the division regarding decisions to remove a minor from the minor's home;

(ii) represent the division in all court and administrative proceedings related to abuse, neglect, and dependency including, but not limited to, shelter hearings, dispositional hearings, dispositional review hearings, periodic review hearings, and petitions for termination of parental rights; and

(iii) be available to and advise caseworkers on an ongoing basis.

(c) The attorney general shall designate no less than 16 full-time attorneys to advise and represent the division in abuse, neglect, and dependency proceedings, including petitions for termination of parental rights. Those attorneys shall devote their full time and attention to that representation and, insofar as it is practicable, shall be housed in or near various offices of the division statewide.

(3) As of July 1, 1998, the attorney general's office shall represent the division with regard to actions involving minors who have not been adjudicated as abused or neglected, but who are otherwise committed to the custody of the division by the juvenile court, and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in this section may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with Section 78A-6-115.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 299, 2008 General Session

62A-4a-114. Financial reimbursement by parent or legal guardian.

(1) Except as provided in Subsection (5), the division shall seek reimbursement of funds it has expended on behalf of a child in the protective custody, temporary custody, or custody of the division, from the child's parents or legal guardians in accordance with an order for child support under Section 78A-6-1106.

(2) A parent or any other obligated person is not responsible for support for periods of time that a child is removed upon a finding by the juvenile court that there were insufficient grounds for that removal and that child is returned to the home of the parent, parents, or legal guardians based upon that finding.

(3) In the event that the juvenile court finds that there were insufficient grounds for the initial removal, but that the child is to remain in the custody of the state, the juvenile court shall order that the parents or any other obligated persons are responsible for support from the point at which it became improper to return the child to the home of the child's parent, parents, or legal guardians.

(4) The attorney general shall represent the division in any legal action taken to enforce this section.

(5) (a) A parent or any other obligated person is not responsible for support if:

(i) the parent or other obligated person's only source of income is a government-issued disability benefit; and

(ii) the benefit described in Subsection (5)(a)(i) is issued because of the parent or other person's disability, and not the child's disability.

(b) A person who seeks to be excused from providing support under Subsection (5)(a) shall provide the division and the Office of Recovery Services with evidence that the person meets the requirements of Subsection (5)(a).

Amended by Chapter 416, 2013 General Session

62A-4a-115. Administrative proceedings.

The department and division shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 75, 2009 General Session

62A-4a-117. Performance monitoring system -- Annual report.

(1) As used in this section:

(a) "Committee" means the state qualitative improvement committee, established by the division to provide community and professional input on the performance of the division.

(b) "Performance indicators" means actual performance in a program, activity, or other function for which there is a performance standard.

(c) (i) "Performance standards" means the targeted or expected level of performance of each area in the child welfare system, including:

(A) child protection services;

(B) adoption;

- (C) foster care; and
- (D) other substitute care.

(ii) "Performance standards" includes the performance goals and measures in effect in 2008 that the division was subject to under federal court oversight, as amended pursuant to Subsection (2), including:

- (A) the qualitative case review; and
- (B) the case process review.

(2) (a) The division may not amend the performance standards unless the amendment is:

- (i) necessary and proper for the effective administration of the division; or
- (ii) necessary to comply with, or implement changes in, the law.

(b) Before amending the performance standards, the division shall provide written notice of the proposed amendment to the committee.

(c) The notice described in Subsection (2)(b) shall include:

- (i) the proposed amendment;
- (ii) a summary of the reason for the proposed amendment; and
- (iii) the proposed effective date of the amendment.

(d) Within 45 days after the day on which the division provides the notice described in Subsection (2)(b) to the committee, the committee shall provide to the division written comments on the proposed amendment.

(e) The division may not implement a proposed amendment to the performance standards until the earlier of:

- (i) seven days after the day on which the division receives the written comments regarding the proposed change described in Subsection (2)(d); or
- (ii) 52 days after the day on which the division provides the notice described in Subsection (2)(b) to the committee.

(f) The division shall:

(i) give full, fair, and good faith consideration to all comments and objections received from the committee;

(ii) notify the committee in writing of:

- (A) the division's decision regarding the proposed amendment; and
- (B) the reasons that support the decision;

(iii) include complete information on all amendments to the performance standards in the report described in Subsection (4); and

(iv) post the changes on the division's website.

(3) The division shall maintain a performance monitoring system to regularly:

- (a) collect information on performance indicators; and
- (b) compare performance indicators to performance standards.

(4) Before January 1 each year the director shall submit a written report to the Child Welfare Legislative Oversight Panel and the Social Services Appropriations Subcommittee that includes:

(a) a comparison between the performance indicators for the prior fiscal year and the performance standards;

(b) for each performance indicator that does not meet the performance standard:

- (i) the reason the standard was not met;
- (ii) the measures that need to be taken to meet the standard; and
- (iii) the division's plan to comply with the standard for the current fiscal year;
- (c) data on the extent to which new and experienced division employees have received training pursuant to statute and division policy; and
- (d) an analysis of the use and efficacy of in-home services, both before and after removal of a child from the child's home.

Amended by Chapter 242, 2012 General Session

62A-4a-118. Annual review of child welfare referrals and cases by executive director -- Accountability to the Legislature -- Review by legislative auditor general.

(1) The division shall use principles of quality management systems, including statistical measures of processes of service, and the routine reporting of performance data to employees.

(2) (a) In addition to development of quantifiable outcome measures and performance measures in accordance with Section 62A-4a-117, the executive director, or his designee, shall annually review a randomly selected sample of child welfare referrals to and cases handled by the division. The purpose of that review shall be to assess whether the division is adequately protecting children and providing appropriate services to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act. The review shall focus directly on the outcome of cases to children and families, and not simply on procedural compliance with specified criteria.

(b) The executive director shall report, regarding his review of those cases, to the legislative auditor general and the Child Welfare Legislative Oversight Panel.

(c) Information obtained as a result of the review shall be provided to caseworkers, supervisors, and division personnel involved in the respective cases, for purposes of education, training, and performance evaluation.

(3) The executive director's review and report to the Legislature shall include:

(a) the criteria used by the executive director, or his designee, in making the evaluation;

(b) findings regarding whether state statutes, division policy, and legislative policy were followed in each sample case;

(c) findings regarding whether, in each sample case, referrals, removals, or cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act, and division policy;

(d) an assessment of the division's intake procedures and decisions, including an assessment of the appropriateness of decisions not to accept referrals; and

(e) an assessment of the appropriateness of the division's assignment of

priority.

(4) (a) In addition to the review conducted by the executive director, beginning July 1, 2004, the legislative auditor general shall audit a sample of child welfare referrals to and cases handled by the division and report his findings to the Child Welfare Legislative Oversight Panel.

(b) An audit under Subsection (4)(a) shall be conducted at least once every three years, but may be conducted more frequently pursuant to Subsection (4)(d).

(c) With regard to the sample of referrals, removals, and cases, the Legislative Auditor General's report may include:

(i) findings regarding whether state statutes, division policy, and legislative policy were followed by the division and its employees;

(ii) a determination regarding whether referrals, removals, and cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided for families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act, and division policy;

(iii) an assessment of the division's intake procedures and decisions, including an assessment of the appropriateness of decisions not to accept referrals;

(iv) an assessment of the appropriateness of the division's assignment of priority;

(v) a determination regarding whether the department's review process is effecting beneficial change within the division and accomplishing the mission established by the Legislature and the department for that review process; and

(vi) findings regarding any other issues identified by the auditor or others under Subsection (4)(d).

(d) An audit under Subsection (4)(a) may be initiated by:

(i) the Audit Subcommittee of the Legislative Management Committee;

(ii) the Child Welfare Legislative Oversight Panel; or

(iii) the Legislative Auditor General, based on the results of the executive director's review under Subsection (2).

Amended by Chapter 3, 2008 General Session

62A-4a-119. Division required to produce "family impact statement" with regard to rules.

Beginning May 1, 2000, whenever the division establishes a rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, those processes shall include an assessment of the impact of that rule on families. Those assessments shall determine the impact of the rule on the authority of parents to oversee the care, supervision, upbringing, and education of children in the parents' custody. The division shall publish a family impact statement describing those assessments and determinations, within 90 days of the establishment of each rule.

Amended by Chapter 75, 2009 General Session

62A-4a-120. Accommodation of moral and religious beliefs and culture.

(1) The division shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and establish procedures to accommodate the moral and religious beliefs, and culture, of the minors and families it serves, including:

- (a) the immediate family and other relatives of a minor in any type of custody or otherwise under the jurisdiction of the court;
- (b) foster and other out-of-home placement families; and
- (c) adoptive families.

(2) The accommodation under Subsection (1) applies to placements, treatment plans, services, and other activities of the division.

Amended by Chapter 382, 2008 General Session

62A-4a-121. Reimbursement of motor vehicle insurance coverage for foster child.

(1) Within the amounts appropriated to the division for the purposes described in this section, the division may reimburse a foster parent for providing owner's or operator's security covering a foster child's operation of a motor vehicle in amounts required under Section 31A-22-304 if the foster child is in the legal custody of the division.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing:

(a) a procedure for providing the reimbursement to a foster parent described in Subsection (1);

(b) eligibility requirements for a foster parent to qualify for a reimbursement under this section; and

(c) a method for determining the amount of reimbursement that a foster parent is eligible to receive under this section.

(3) The division shall report to the Transportation Interim Committee no later than November 30, 2009:

(a) the number of foster children in the legal custody of the Division of Child and Family Services who have been issued a driver license;

(b) the results and impacts on the division and on foster parents signing for a foster child to receive a driver license; and

(c) the division's cost of reimbursing foster parents for providing owner's or operator's security in accordance with Subsection (1).

Enacted by Chapter 314, 2008 General Session

62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of state.

(1) (a) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children. A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parental rights. A

governmental entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests.

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest. Until the state proves parental unfitness, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

(c) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected. The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution and is a fundamental public policy of this state.

(d) The state recognizes that:

(i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline the parent's children; and

(ii) the state's role is secondary and supportive to the primary role of a parent.

(e) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.

(f) Subsections (2) through (7) shall be interpreted and applied consistent with this Subsection (1).

(2) It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A, Chapter 6, Juvenile Court Act of 1996. Therefore, the state, as *parens patriae*, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's children.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child, it shall take into account the child's need for protection from

immediate harm and the extent to which the child's extended family may provide needed protection. Throughout its involvement, the division shall utilize the least intrusive and least restrictive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

(4) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may seek custody of the child for a planned period and place the child in a safe environment, subject to the requirements of this section and in accordance with the requirements of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and:

(a) when safe and appropriate, return the child to the child's parent; or

(b) as a last resort, pursue another permanency plan.

(5) In determining and making "reasonable efforts" with regard to a child, pursuant to the provisions of Section 62A-4a-203, both the division's and the court's paramount concern shall be the child's health, safety, and welfare. The desires of a parent for the parent's child, and the constitutionally protected rights of a parent, as described in this section, shall be given full and serious consideration by the division and the court.

(6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, provide reunification services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does not exempt the division from providing court-ordered services.

(7) (a) The division shall strive to achieve appropriate permanency for children who are abused, neglected, or dependent. The division shall provide in-home services, where appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. If in-home services fail or are otherwise insufficient or inappropriate, the division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child. If in-home services and kinship placement are not safe or appropriate, or in-home services and kinship placement fail and cannot be corrected, the division may pursue a foster placement.

(b) If the use or continuation of "reasonable efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the permanency plan for a child, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(c) Subject to the parental rights recognized and protected under this section, if, because of a parent's conduct or condition, the parent is determined to be unfit or incompetent based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child is of paramount importance, and shall be protected in determining whether that parent's rights should be terminated.

(8) The state's right to direct or intervene in the provision of medical or mental

health care for a child is subject to Subsection 78A-6-117(2)(n).

Amended by Chapter 281, 2012 General Session

62A-4a-202. In-home services for the preservation of families.

(1) (a) Within appropriations from the Legislature and money obtained under Subsection (5), the division shall provide in-home services for the purpose of family preservation to any family with a child whose health and safety is not immediately endangered, when:

- (i) (A) the child is at risk of being removed from the home; or
- (B) the family is in crisis; and
- (ii) the division determines that it is reasonable and appropriate.

(b) In determining whether in-home services are reasonable and appropriate, in keeping with the provisions of Subsection 62A-4a-201(1) the child's health, safety, and welfare shall be the paramount concern.

(c) The division shall consider whether the services described in Subsection (1)(b):

- (i) will be effective within a six-month period; and
- (ii) are likely to prevent continued abuse or neglect of the child.

(2) (a) The division shall maintain a statewide inventory of in-home services available through public and private agencies or individuals for use by caseworkers.

(b) The inventory described in Subsection (2)(a) shall include:

- (i) the method of accessing each service;
- (ii) eligibility requirements for each service;
- (iii) the geographic areas and the number of families that can be served by each service; and
- (iv) information regarding waiting lists for each service.

(3) (a) As part of its in-home services for the preservation of families, the division shall provide in-home services in varying degrees of intensity and contact that are specific to the needs of each individual family.

(b) As part of its in-home services, the division shall:

- (i) provide customized assistance;
- (ii) provide support or interventions that are tailored to the needs of the family;
- (iii) discuss the family's needs with the parent;
- (iv) discuss an assistance plan for the family with the parent; and
- (v) address:
 - (A) the safety of children;
 - (B) the needs of the family; and
 - (C) services necessary to aid in the preservation of the family and a child's ability to remain in the home.

(c) In-home services shall be, as practicable, provided within the region that the family resides, using existing division staff.

(4) (a) The division may use specially trained caseworkers, private providers, or other persons to provide the in-home services described in Subsection (3).

(b) The division shall allow a caseworker to be flexible in responding to the

needs of each individual family, including:

- (i) limiting the number of families assigned; and
- (ii) being available to respond to assigned families within 24 hours.

(5) To provide, expand, and improve the delivery of in-home services to prevent the removal of children from their homes and promote the preservation of families, the division shall make substantial effort to obtain funding, including:

- (a) federal grants;
- (b) federal waivers; and
- (c) private money.

Amended by Chapter 265, 2014 General Session

62A-4a-202.1. Entering home of a child -- Taking a child into protective custody -- Caseworker accompanied by peace officer -- Preventive services -- Shelter facility or emergency placement.

(1) A peace officer or child welfare worker may not:

(a) enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless authorized under Subsection 78A-6-106(2); or

(b) remove a child from the child's home or take a child into custody under this section solely on the basis of educational neglect, truancy, or failure to comply with a court order to attend school.

(2) A child welfare worker within the division may take action under Subsection (1) accompanied by a peace officer, or without a peace officer when a peace officer is not reasonably available.

(3) (a) If possible, consistent with the child's safety and welfare, before taking a child into protective custody, the child welfare worker shall also determine whether there are services available that, if provided to a parent or guardian of the child, would eliminate the need to remove the child from the custody of the child's parent or guardian.

(b) If the services described in Subsection (3)(a) are reasonably available, they shall be utilized.

(c) In determining whether the services described in Subsection (3)(a) are reasonably available, and in making reasonable efforts to provide those services, the child's health, safety, and welfare shall be the child welfare worker's paramount concern.

(4) (a) A child removed or taken into custody under this section may not be placed or kept in a secure detention facility pending court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(b) A child removed from the custody of the child's parent or guardian but who does not require physical restriction shall be given temporary care in:

- (i) a shelter facility; or
 - (ii) an emergency placement in accordance with Section 62A-4a-209.
- (c) When making a placement under Subsection (4)(b), the Division of Child

and Family Services shall give priority to a placement with a noncustodial parent, relative, or friend, in accordance with Section 62A-4a-209.

(d) If the child is not placed with a noncustodial parent, a relative, or a designated friend, the caseworker assigned to the child shall file a report with the caseworker's supervisor explaining why a different placement was in the child's best interest.

(5) When a child is removed from the child's home or school or taken into protective custody, the caseworker shall give a parent of the child a pamphlet or flier explaining:

(a) the parent's rights under this part, including the right to be present and participate in any court proceeding relating to the child's case;

(b) that it may be in the parent's best interest to contact an attorney and that, if the parent cannot afford an attorney, the court will appoint one;

(c) the name and contact information of a division employee the parent may contact with questions;

(d) resources that are available to the parent, including:

(i) mental health resources;

(ii) substance abuse resources; and

(iii) parenting classes; and

(e) any other information considered relevant by the division.

(6) The pamphlet or flier described in Subsection (5) shall be:

(a) evaluated periodically for its effectiveness at conveying necessary information and revised accordingly;

(b) written in simple, easy-to-understand language; and

(c) available in English and other languages as the division determines to be appropriate and necessary.

Amended by Chapter 221, 2012 General Session

Amended by Chapter 293, 2012 General Session

62A-4a-202.2. Notice upon removal of child -- Locating noncustodial parent -- Written statement of procedural rights and preliminary proceedings.

(1) (a) Any peace officer or caseworker who takes a child into protective custody pursuant to Section 62A-4a-202.1 shall immediately use reasonable efforts to locate and inform, through the most efficient means available, the parents, including a noncustodial parent, the guardian, or responsible relative:

(i) that the child has been taken into protective custody;

(ii) the reasons for removal and placement of the child in protective custody;

(iii) that a written statement is available that explains:

(A) the parent's or guardian's procedural rights; and

(B) the preliminary stages of the investigation and shelter hearing;

(iv) of a telephone number where the parent or guardian may access further information;

(v) that the child and the child's parent or guardian are entitled to have an attorney present at the shelter hearing;

(vi) that if the child's parent or guardian is impecunious and desires to have an attorney, one will be provided; and

(vii) that resources are available to assist the child's parent or guardian, including:

- (A) a parent advocate;
- (B) a qualified attorney; or
- (C) potential expert witnesses to testify on behalf of the:
 - (I) child;
 - (II) child's parent;
 - (III) child's guardian; or
 - (IV) child's family.

(b) For purposes of locating and informing the noncustodial parent as required in Subsection (1)(a), the division shall search for the noncustodial parent through the national parent locator database if the division is unable to locate the noncustodial parent through other reasonable efforts.

(2) (a) The Office of the Attorney General shall adopt, print, and distribute a form for the written statement described in Subsection (1)(a)(iii).

(b) The statement described in Subsections (1)(a)(iii) and (2)(a) shall:

(i) be made available to the division and for distribution in:

- (A) schools;
- (B) health care facilities;
- (C) local police and sheriff's offices;
- (D) the division; and
- (E) any other appropriate office within the Department of Human Services;

(ii) be in simple language; and

(iii) include at least the following information:

(A) the conditions under which a child may be released;

(B) hearings that may be required;

(C) the means by which the parent or guardian may access further specific information about a child's case and conditions of protective and temporary custody; and

(D) the rights of a child and of the parent or guardian to legal counsel and to appeal.

(3) If reasonable efforts are made by the peace officer or caseworker to notify the parent or guardian or a responsible relative in accordance with the requirements of Subsection (1), failure to notify:

(a) shall be considered to be due to circumstances beyond the control of the peace officer or caseworker; and

(b) may not be construed to:

(i) permit a new defense to any juvenile or judicial proceeding; or

(ii) interfere with any rights, procedures, or investigations provided for by this chapter or Title 78A, Chapter 6, Juvenile Court Act of 1996.

Amended by Chapter 3, 2008 General Session

62A-4a-202.3. Investigation -- Supported or unsupported reports -- Child in protective custody.

(1) When a child is taken into protective custody in accordance with Section 62A-4a-202.1, 78A-6-106, or 78A-6-302, or when the division takes any other action which would require a shelter hearing under Subsection 78A-6-306(1), the division shall immediately initiate an investigation of the:

- (a) circumstances of the child; and
- (b) grounds upon which the decision to place the child into protective custody was made.

(2) The division's investigation shall conform to reasonable professional standards, and shall include:

- (a) a search for and review of any records of past reports of abuse or neglect involving:

- (i) the same child;
 - (ii) any sibling or other child residing in the same household as the child; and
 - (iii) the alleged perpetrator;

- (b) with regard to a child who is five years of age or older, a personal interview with the child:

- (i) outside of the presence of the alleged perpetrator; and
 - (ii) conducted in accordance with the requirements of Subsection (7);
 - (c) if a parent or guardian can be located, an interview with at least one of the child's parents or guardian;

- (d) an interview with the person who reported the abuse, unless the report was made anonymously;

- (e) where possible and appropriate, interviews with other third parties who have had direct contact with the child, including:

- (i) school personnel; and
 - (ii) the child's health care provider;
 - (f) an unscheduled visit to the child's home, unless:

- (i) there is a reasonable basis to believe that the reported abuse was committed by a person who:

- (A) is not the child's parent; and

- (B) does not:

- (I) live in the child's home; or

- (II) otherwise have access to the child in the child's home; or

- (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and

- (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure to meet the child's medical needs, a medical examination, obtained no later than 24 hours after the child is placed in protective custody.

(3) The division may rely on a written report of a prior interview rather than conducting an additional interview, if:

- (a) law enforcement:

- (i) previously conducted a timely and thorough investigation regarding the alleged abuse, neglect, or dependency; and

- (ii) produced a written report;
- (b) the investigation described in Subsection (3)(a)(i) included one or more of the interviews required by Subsection (2); and
- (c) the division finds that an additional interview is not in the best interest of the child.

(4) (a) The division's determination of whether a report is supported or unsupported may be based on the child's statements alone.

(b) Inability to identify or locate the perpetrator may not be used by the division as a basis for:

- (i) determining that a report is unsupported; or
- (ii) closing the case.

(c) The division may not determine a case to be unsupported or identify a case as unsupported solely because the perpetrator was an out-of-home perpetrator.

(d) Decisions regarding whether a report is supported, unsupported, or without merit shall be based on the facts of the case at the time the report was made.

(5) The division should maintain protective custody of the child if it finds that one or more of the following conditions exist:

(a) the child does not have a natural parent, guardian, or responsible relative who is able and willing to provide safe and appropriate care for the child;

(b) (i) shelter of the child is a matter of necessity for the protection of the child; and

(ii) there are no reasonable means by which the child can be protected in:

(A) the child's home; or

(B) the home of a responsible relative;

(c) there is substantial evidence that the parent or guardian is likely to flee the jurisdiction of the court; or

(d) the child has left a previously court ordered placement.

(6) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the division shall:

(i) convene a child protection team to review the circumstances regarding removal of the child from the child's home or school; and

(ii) prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78A-6-306.

(b) The child protection team described in Subsection (6)(a)(i) shall include:

(i) the caseworker assigned to the case;

(ii) the caseworker who made the decision to remove the child;

(iii) a representative of the school or school district where the child attends school;

(iv) the peace officer who removed the child from the home;

(v) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;

(vi) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances; and

(vii) any other individuals determined appropriate and necessary by the team coordinator and chair.

(c) At the 24-hour meeting, the division shall have available for review and consideration the complete child protective services and foster care history of the child and the child's parents and siblings.

(7) (a) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be:

(i) except as provided in Subsection (7)(b), audio or video taped; and

(ii) except as provided in Subsection (7)(c), conducted with a support person of the child's choice present.

(b) (i) Subject to Subsection (7)(b)(ii), an interview described in Subsection (7)(a) may be conducted without being taped if the child:

(A) is at least nine years old;

(B) refuses to have the interview audio taped; and

(C) refuses to have the interview video taped.

(ii) If, pursuant to Subsection (7)(b)(i), an interview is conducted without being taped, the child's refusal shall be documented, as follows:

(A) the interviewer shall attempt to get the child's refusal on tape, including the reasons for the refusal; or

(B) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the interviewer shall:

(I) state on the tape that the child is present, but has refused to have the interview, refusal, or the reasons for the refusal taped; or

(II) if complying with Subsection (7)(b)(ii)(B)(I) will result in the child, who would otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall document, in writing, that the child refused to allow the interview to be taped and the reasons for that refusal.

(iii) The division shall track the number of interviews under this Subsection (7) that are not taped, and the number of refusals that are not taped, for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals, or taped refusals, than other interviewers.

(c) (i) Notwithstanding Subsection (7)(a)(ii), the support person who is present for an interview of a child may not be an alleged perpetrator.

(ii) Subsection (7)(a)(ii) does not apply if the child refuses to have a support person present during the interview.

(iii) If a child described in Subsection (7)(c)(ii) refuses to have a support person present in the interview, the interviewer shall document, in writing, the refusal and the reasons for the refusal.

(iv) The division shall track the number of interviews under this Subsection (7) where a child refuses to have a support person present for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals than other interviewers.

(8) The division shall cooperate with law enforcement investigations regarding the alleged perpetrator.

(9) The division may not close an investigation solely on the grounds that the division investigator is unable to locate the child until all reasonable efforts have been

made to locate the child and family members including:

- (a) visiting the home at times other than normal work hours;
- (b) contacting local schools;
- (c) contacting local, county, and state law enforcement agencies; and
- (d) checking public assistance records.

Amended by Chapter 3, 2008 General Session

62A-4a-202.4. Access to criminal background information.

(1) For purposes of background screening and investigation of abuse or neglect under this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, the division shall have direct access to criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

(2) The division and the Office of Guardian Ad Litem are authorized to request the Department of Public Safety to conduct a complete Federal Bureau of Investigation criminal background check through the national criminal history system (NCIC).

Amended by Chapter 32, 2009 General Session

62A-4a-202.6. Conflict child protective services investigations -- Authority of investigators.

(1) (a) The division shall contract with an independent child protective service investigator from the private sector to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division.

(b) The executive director shall designate an entity within the department, other than the division, to monitor the contract for the investigators described in Subsection (1)(a).

(c) Subject to Subsection (4), when a report is made that a child is abused or neglected while in the custody of the division:

(i) the attorney general may, in accordance with Section 67-5-16, and with the consent of the division, employ a child protective services investigator to conduct a conflict investigation of the report; or

(ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent of the division, conduct a conflict investigation of the report.

(d) Subsection (1)(c)(ii) does not prevent a law enforcement officer from, without the consent of the division, conducting a criminal investigation of abuse or neglect under Title 53, Public Safety Code.

(2) The investigators described in Subsections (1)(c) and (d) may also investigate allegations of abuse or neglect of a child by a department employee or a licensed substitute care provider.

(3) The investigators described in Subsection (1), if not peace officers, shall have the same rights, duties, and authority of a child protective services investigator employed by the division to:

(a) make a thorough investigation upon receiving either an oral or written report of alleged abuse or neglect of a child, with the primary purpose of that investigation

being the protection of the child;

(b) make an inquiry into the child's home environment, emotional, or mental health, the nature and extent of the child's injuries, and the child's physical safety;

(c) make a written report of their investigation, including determination regarding whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and forward a copy of that report to the division within the time mandates for investigations established by the division; and

(d) immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or includes an allegation of educational neglect.

(4) If there is a lapse in the contract with a private child protective service investigator and no other investigator is available under Subsection (1)(a) or (c), the department may conduct an independent investigation.

Amended by Chapter 293, 2012 General Session

62A-4a-202.8. Child protection team meeting -- Timing.

(1) Subject to Subsection (2), if the division files a petition under Section 78A-6-304, the division shall convene a child protection team meeting to:

(a) review the circumstances of the filing of the petition; and

(b) develop or review implementation of a safety plan to protect the child from further abuse, neglect, or dependency.

(2) The child protection team meeting required under Subsection (1) shall be held within the shorter of:

(a) 14 days of the day on which the petition is filed under Section 78A-6-304 if the conditions of Subsection (2)(b) or (c) are not met;

(b) 24 hours of the filing of the petition under Section 78A-6-304, excluding weekends and holidays, if the child who is the subject of the petition will likely be taken into protective custody unless there is an expedited hearing and services ordered under the protective supervision of the court; or

(c) 24 hours after receipt of a child into protective custody, excluding weekends and holidays, if the child is taken into protective custody as provided in Section 62A-4a-202.3.

(3) The child protection team shall include as many persons under Subsection 62A-4a-202.3(6)(b) as appropriate.

(4) At its meeting the child protection team shall review the complete child protective services and foster care history of the child and the child's parents and siblings.

Amended by Chapter 3, 2008 General Session

62A-4a-203. Removal of a child from home -- Reasonable efforts to maintain child in home -- Exception -- Reasonable efforts for reunification.

(1) Because removal of a child from the child's home affects protected, constitutional rights of the parent and has a dramatic, long-term impact on a child, the

division shall:

(a) when possible and appropriate, without danger to the child's welfare, make reasonable efforts to prevent or eliminate the need for removal of a child from the child's home prior to placement in substitute care;

(b) determine whether there is substantial cause to believe that a child has been or is in danger of abuse or neglect, in accordance with the guidelines described in Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, prior to removing the child from the child's home; and

(c) when it is possible and appropriate, and in accordance with the limitations and requirements of Sections 78A-6-312 and 78A-6-314, make reasonable efforts to make it possible for a child in substitute care to return to the child's home.

(2) (a) In determining the reasonableness of efforts needed to maintain a child in the child's home or to return a child to the child's home, in accordance with Subsection (1)(a) or (c), the child's health, safety, and welfare shall be the paramount concern.

(b) The division shall consider whether the efforts described in Subsections (1) and (2) are likely to prevent abuse or continued neglect of the child.

(3) When removal and placement in substitute care is necessary to protect a child, the efforts described in Subsections (1) and (2):

(a) are not reasonable or appropriate; and

(b) should not be utilized.

(4) Subject to Subsection (5), in cases where sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, the state has no duty to make reasonable efforts to, in any way, attempt to:

(a) maintain a child in the child's home;

(b) provide reunification services; or

(c) rehabilitate the offending parent or parents.

(5) Nothing in Subsection (4) exempts the division from providing court ordered services.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 299, 2008 General Session

62A-4a-203.5. Mandatory petition for termination of parental rights.

(1) For purposes of this section, "abandoned infant" means a child who is 12 months of age or younger whose parent or parents:

(a) although having legal custody of the child, fail to maintain physical custody of the child without making arrangements for the care of the child;

(b) have failed to maintain physical custody, and have failed to exhibit the normal interest of a natural parent without just cause; or

(c) are unwilling to have physical custody of the child.

(2) Except as provided in Subsection (3), notwithstanding any other provision of this chapter or of Title 78A, Chapter 6, Juvenile Court Act of 1996, the division shall file a petition for termination of parental rights with regard to:

(a) an abandoned infant; or

(b) a parent, whenever a court has determined that the parent has:
(i) committed murder or child abuse homicide of another child of that parent;
(ii) committed manslaughter of another child of that parent;
(iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another child of that parent; or
(iv) committed a felony assault or abuse that has resulted in serious physical injury to another child of that parent, or to the other parent of that child.

(3) The division is not required to file a petition for termination of parental rights under Subsection (2) if:

(a) the child is being cared for by a relative;
(b) the division has:
(i) documented in the child's child and family plan a compelling reason for determining that filing a petition for termination of parental rights is not in the child's best interest; and
(ii) made that child and family plan available to the court for its review; or
(c) (i) the court has previously determined, in accordance with the provisions and limitations of Sections 62A-4a-201, 62A-4a-203, 78A-6-306, and 78A-6-312, that reasonable efforts to reunify the child with the child's parent or parents were required; and
(ii) the division has not provided, within the time period specified in the child and family plan, services that had been determined to be necessary for the safe return of the child.

Amended by Chapter 3, 2008 General Session

62A-4a-205. Child and family plan -- Parent-time.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's child and family plan shall be finalized.

(2) (a) The division may use an interdisciplinary team approach in developing each child and family plan.

(b) The interdisciplinary team described in Subsection (2)(a) may include representatives from the following fields:

(i) mental health;
(ii) education; and
(iii) if appropriate, law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's child and family plan:

(i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

(ii) the child;
(iii) the child's foster parents;
(iv) if appropriate, the child's stepparent; and
(v) the child's guardian ad litem, if one has been appointed by the court.

(b) In relation to all information considered by the division in developing a child and family plan, additional weight and attention shall be given to the input of the child's

natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

(c) (i) The division shall make a substantial effort to develop a child and family plan with which the child's parents agree.

(ii) If a parent does not agree with a child and family plan:

(A) the division shall strive to resolve the disagreement between the division and the parent; and

(B) if the disagreement is not resolved, the division shall inform the court of the disagreement.

(4) A copy of the child and family plan shall, immediately upon completion, or as soon as reasonably possible thereafter, be provided to the:

(a) guardian ad litem;

(b) child's natural parents; and

(c) child's foster parents.

(5) Each child and family plan shall:

(a) specifically provide for the safety of the child, in accordance with federal law; and

(b) clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The child and family plan shall set forth, with specificity, at least the following:

(a) the reason the child entered into the custody of the division;

(b) documentation of the:

(i) reasonable efforts made to prevent placement of the child in the custody of the division; or

(ii) emergency situation that existed and that prevented the reasonable efforts described in Subsection (6)(b)(i), from being made;

(c) the primary permanency goal for the child and the reason for selection of that goal;

(d) the concurrent permanency goal for the child and the reason for the selection of that goal;

(e) if the plan is for the child to return to the child's family:

(i) specifically what the parents must do in order to enable the child to be returned home;

(ii) specifically how the requirements described in Subsection (6)(e)(i) may be accomplished; and

(iii) how the requirements described in Subsection (6)(e)(i) will be measured;

(f) the specific services needed to reduce the problems that necessitated placing the child in the division's custody;

(g) the name of the person who will provide for and be responsible for case management;

(h) subject to Subsection (10), a parent-time schedule between the natural parent and the child;

(i) subject to Subsection (7), the health and mental health care to be provided to address any known or diagnosed mental health needs of the child;

(j) if residential treatment rather than a foster home is the proposed placement, a requirement for a specialized assessment of the child's health needs including an assessment of mental illness and behavior and conduct disorders; and

(k) social summaries that include case history information pertinent to case planning.

(7) (a) Subject to Subsection (7)(b), in addition to the information required under Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental health needs of a child, if the child:

(i) is placed in residential treatment; and

(ii) has medical or mental health issues that need to be addressed.

(b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate medical or mental health diagnosis of the parent's child from a licensed practitioner of the parent's choice.

(8) (a) Each child and family plan shall be specific to each child and the child's family, rather than general.

(b) The division shall train its workers to develop child and family plans that comply with:

(i) federal mandates; and

(ii) the specific needs of the particular child and the child's family.

(c) All child and family plans and expectations shall be individualized and contain specific time frames.

(d) Subject to Subsection (8)(h), child and family plans shall address problems that:

(i) keep a child in placement; and

(ii) keep a child from achieving permanence in the child's life.

(e) Each child and family plan shall be designed to minimize disruption to the normal activities of the child's family, including employment and school.

(f) In particular, the time, place, and amount of services, hearings, and other requirements ordered by the court in the child and family plan shall be designed, as much as practicable, to help the child's parents maintain or obtain employment.

(g) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

(h) For purposes of Subsection (8)(d), a child and family plan may only include requirements that:

(i) address findings made by the court; or

(ii) (A) are requested or consented to by a parent or guardian of the child; and

(B) are agreed to by the division and the guardian ad litem.

(9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption.

(b) Notwithstanding Subsection (9)(a), if the division documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another planned permanent living arrangement in accordance with

federal law.

(10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a court order issued pursuant to Subsections 78A-6-312(3), (6), and (7).

(b) Notwithstanding Subsection (10)(a), the person designated by the division or a court to supervise a parent-time session may deny parent-time for that session if the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time in order to:

- (i) protect the physical safety of the child;
- (ii) protect the life of the child; or
- (iii) consistent with Subsection (10)(c), prevent the child from being traumatized by contact with the parent.

(c) In determining whether the condition of the parent described in Subsection (10)(b) will traumatize a child, the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

- (i) the child's fear of the parent; and
- (ii) the nature of the alleged abuse or neglect.

(11) The division shall consider visitation with their grandparents for children in state custody if the division determines visitation to be in the best interest of the child and:

- (a) there are no safety concerns regarding the behavior or criminal background of the grandparents;
 - (b) allowing visitation would not compete with or undermine reunification goals;
 - (c) there is a substantial relationship between the grandparents and children;
- and
- (d) the visitation will not unduly burden the foster parents.

Amended by Chapter 158, 2011 General Session

Amended by Chapter 167, 2011 General Session

Amended by Chapter 233, 2011 General Session

62A-4a-205.5. Prohibition of discrimination based on race, color, or ethnicity.

(1) As used in this section, "adoptable children" means children:

- (a) who are in the custody of the division; and
- (b) (i) who have permanency goals of adoption; or
- (ii) for whom a final plan for pursuing termination of parental rights has been approved in accordance with Section 78A-6-314.

(2) Except as required under the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, the division may not base its decision for placement of adoptable children on the race, color, ethnicity, or national origin of either the child or the prospective adoptive parents.

(3) The basis of a decision for placement of an adoptable child shall be the best interest of the child.

Amended by Chapter 237, 2010 General Session

62A-4a-205.6. Adoptive placement time frame -- Contracting with agencies.

(1) With regard to a child who has a primary permanency goal of adoption or for whom a final plan for pursuing termination of parental rights has been approved in accordance with Section 78A-6-314, the division shall make intensive efforts to place the child in an adoptive home within 30 days of the earlier of:

- (a) approval of the final plan; or
- (b) establishment of the primary permanency goal.

(2) If within the time periods described in Subsection (1) the division is unable to locate a suitable adoptive home, it shall contract with licensed child placing agencies to search for an appropriate adoptive home for the child, and to place the child for adoption. The division shall comply with the requirements of Section 62A-4a-607 and contract with a variety of child placing agencies licensed under Part 6. In accordance with federal law, the division shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.

(3) The division shall ensure that children who are adopted and were previously in its custody, continue to receive the medical and mental health coverage that they are entitled to under state and federal law.

(4) The division may not consider a prospective adoptive parent's willingness or unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a condition of placing a child with the prospective adoptive parent.

Amended by Chapter 438, 2013 General Session

62A-4a-206. Process for removal of a child from foster family -- Procedural due process.

(1) (a) The Legislature finds that, except with regard to a child's natural parent or legal guardian, a foster family has a very limited but recognized interest in its familial relationship with a foster child who has been in the care and custody of that family. In making determinations regarding removal of a child from a foster home, the division may not dismiss the foster family as a mere collection of unrelated individuals.

(b) The Legislature finds that children in the temporary custody and custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.

(c) For the reasons described in Subsections (1)(a) and (b), the division shall provide procedural due process for a foster family prior to removal of a foster child from their home, regardless of the length of time the child has been in that home, unless removal is for the purpose of:

- (i) returning the child to the child's natural parent or legal guardian;
- (ii) immediately placing the child in an approved adoptive home;
- (iii) placing the child with a relative, as defined in Subsection 78A-6-307(1)(b), who obtained custody or asserted an interest in the child within the preference period described in Subsection 78A-6-307(18)(a); or

(iv) placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

(2) (a) The division shall maintain and utilize due process procedures for removal of a foster child from a foster home, in accordance with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(b) Those procedures shall include requirements for:

(i) personal communication with, and a written explanation of the reasons for the removal to, the foster parents prior to removal of the child; and

(ii) an opportunity for foster parents to present their information and concerns to the division and to:

(A) request a review, to be held before removal of the child, by a third party neutral fact finder; or

(B) if the child has been placed with the foster parents for a period of at least two years, request a review, to be held before removal of the child, by:

(I) the juvenile court judge currently assigned to the child's case; or

(II) if the juvenile court judge currently assigned to the child's case is not available, another juvenile court judge.

(c) If the division determines that there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, it shall place the child in emergency foster care during the pendency of the procedures described in this subsection, instead of making another foster care placement.

(3) If the division removes a child from a foster home based upon the child's statement alone, the division shall initiate and expedite the processes described in Subsection (2). The division may take no formal action with regard to that foster parent's license until after those processes, in addition to any other procedure or hearing required by law, have been completed.

(4) When a complaint is made to the division by a foster child against a foster parent, the division shall, within 30 business days, provide the foster parent with information regarding the specific nature of the complaint, the time and place of the alleged incident, and who was alleged to have been involved.

(5) Whenever the division places a child in a foster home, it shall provide the foster parents with:

(a) notification of the requirements of this section;

(b) a written description of the procedures enacted by the division pursuant to Subsection (2) and how to access those processes; and

(c) written notification of the foster parents' ability to petition the juvenile court directly for review of a decision to remove a foster child who has been in their custody for 12 months or longer, in accordance with the limitations and requirements of Section 78A-6-318.

(6) The requirements of this section do not apply to the removal of a child based on a foster parent's request for that removal.

(7) It is unlawful for a person, with the intent to avoid compliance with the requirements of this section, to:

(a) take action, or encourage another to take action, against the license of a

foster parent; or

(b) remove a child from a foster home before the child has been placed with the foster parents for two years.

(8) The division may not remove a foster child from a foster parent who is a relative, as defined in Subsection 78A-6-307(1)(b), of the child on the basis of the age or health of the foster parent without determining by:

(a) clear and convincing evidence that the foster parent is incapable of caring for the foster child, if the alternative foster parent would not be another relative of the child; or

(b) a preponderance of the evidence that the foster parent is incapable of caring for the foster child, if the alternative foster parent would be another relative of the child.

Amended by Chapter 214, 2012 General Session

62A-4a-206.1. Foster parent's preference upon child's reentry into foster care.

When a child reenters the temporary custody or the custody of the division, and is to be placed in foster care, the child's former foster parents shall be notified. Upon a determination of their willingness and ability to safely and appropriately care for the child, those foster parents shall be given a preference for placement of the child.

Amended by Chapter 169, 2007 General Session

62A-4a-207. Legislative Oversight Panel -- Responsibilities.

(1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the following members:

(i) two members of the Senate, one from the majority party and one from the minority party, appointed by the president of the Senate; and

(ii) three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the speaker of the House of Representatives.

(b) Members of the panel shall serve for two-year terms, or until their successors are appointed.

(c) A vacancy exists whenever a member ceases to be a member of the Legislature, or when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and the replacement shall fill the unexpired term.

(2) The president of the Senate shall designate one of the senators appointed to the panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives shall designate one of the representatives appointed to the panel under Subsection (1) as the House chair of the panel.

(3) The panel shall follow the interim committee rules established by the Legislature.

(4) The panel shall:

(a) examine and observe the process and execution of laws governing the child welfare system by the executive branch and the judicial branch;

(b) upon request, receive testimony from the public, the juvenile court, and from all state agencies involved with the child welfare system, including the division, other offices and agencies within the department, the attorney general's office, the Office of Guardian Ad Litem, and school districts;

(c) before October 1 of each year, receive a report from the judicial branch identifying the cases not in compliance with the time limits established in the following sections, and the reasons for noncompliance:

(i) Subsection 78A-6-306(1)(a), regarding shelter hearings;

(ii) Section 78A-6-309, regarding pretrial and adjudication hearings;

(iii) Section 78A-6-312, regarding dispositional hearings and reunification services; and

(iv) Section 78A-6-314, regarding permanency hearings and petitions for termination;

(d) receive recommendations from, and make recommendations to the governor, the Legislature, the attorney general, the division, the Office of Guardian Ad Litem, the juvenile court, and the public;

(e) (i) receive reports from the executive branch and the judicial branch on budgetary issues impacting the child welfare system; and

(ii) recommend, as the panel considers advisable, budgetary proposals to the Social Services Appropriations Subcommittee and the Executive Offices and Criminal Justice Appropriations Subcommittee, which recommendation should be made before December 1 of each year;

(f) study and recommend proposed changes to laws governing the child welfare system;

(g) study actions the state can take to preserve, unify, and strengthen the child's family ties whenever possible in the child's best interest, including recognizing the constitutional rights and claims of parents whenever those family ties are severed or infringed;

(h) perform such other duties related to the oversight of the child welfare system as the panel considers appropriate; and

(i) annually report the panel's findings and recommendations to the president of the Senate, the speaker of the House of Representatives, the Health and Human Services Interim Committee, and the Judiciary Interim Committee.

(5) (a) The panel has authority to review and discuss individual cases.

(b) When an individual case is discussed, the panel's meeting may be closed pursuant to Title 52, Chapter 4, Open and Public Meetings Act.

(c) When discussing an individual case, the panel shall make reasonable efforts to identify and consider the concerns of all parties to the case.

(6) (a) The panel has authority to make recommendations to the Legislature, the governor, the Board of Juvenile Court Judges, the division, and any other statutorily created entity related to the policies and procedures of the child welfare system. The panel does not have authority to make recommendations to the court, the division, or any other public or private entity regarding the disposition of any individual case.

(b) The panel may hold public hearings, as it considers advisable, in various locations within the state in order to afford all interested persons an opportunity to

appear and present their views regarding the child welfare system in this state.

(7) (a) All records of the panel regarding individual cases shall be classified private, and may be disclosed only in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The panel shall have access to all of the division's records, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the panel shall maintain the same classification that was designated by the division.

(8) In order to accomplish its oversight functions, the panel has:

(a) all powers granted to legislative interim committees in Section 36-12-11; and

(b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

(9) Compensation and expenses of a member of the panel who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(10) (a) The Office of Legislative Research and General Counsel shall provide staff support to the panel.

(b) The panel is authorized to employ additional professional assistance and other staff members as it considers necessary and appropriate.

Amended by Chapter 387, 2014 General Session

62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.

(1) As used in this section:

(a) "Complainant" means a person who initiates a complaint with the ombudsman.

(b) "Ombudsman" means the child protection ombudsman appointed pursuant to this section.

(2) (a) There is created within the department the position of child protection ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive director.

(b) The ombudsman shall be:

(i) an individual of recognized executive and administrative capacity;

(ii) selected solely with regard to qualifications and fitness to discharge the duties of ombudsman; and

(iii) have experience in child welfare, and in state laws and policies governing abused, neglected, and dependent children.

(c) The ombudsman shall devote full time to the duties of office.

(3) (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a complaint from any person, investigate whether an act or omission of the division with respect to a particular child:

(i) is contrary to statute, rule, or policy;

(ii) places a child's health or safety at risk;

(iii) is made without an adequate statement of reason; or

(iv) is based on irrelevant, immaterial, or erroneous grounds.

(b) The ombudsman may decline to investigate any complaint. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the division of the decision and of the reasons for that decision.

(c) The ombudsman may conduct an investigation on the ombudsman's own initiative.

(4) The ombudsman shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that govern the following:

(i) receiving and processing complaints;

(ii) notifying complainants and the division regarding a decision to investigate or to decline to investigate a complaint;

(iii) prioritizing workload;

(iv) maximum time within which investigations shall be completed;

(v) conducting investigations;

(vi) notifying complainants and the division regarding the results of investigations; and

(vii) making recommendations based on the findings and results of recommendations;

(b) report findings and recommendations in writing to the complainant and the division, in accordance with the provisions of this section;

(c) within appropriations from the Legislature, employ staff as may be necessary to carry out the ombudsman's duties under this part;

(d) provide information regarding the role, duties, and functions of the ombudsman to public agencies, private entities, and individuals;

(e) annually report to the:

(i) Child Welfare Legislative Oversight Panel;

(ii) governor;

(iii) Division of Child and Family Services;

(iv) executive director of the department; and

(v) director of the division; and

(f) as appropriate, make recommendations to the division regarding individual cases, and the rules, policies, and operations of the division.

(5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and the division of that decision.

(b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.

(c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.

(d) The ombudsman shall immediately notify the division if the ombudsman finds

that a child needs protective custody, as that term is defined in Section 78A-6-105.

(e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.

(6) (a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The ombudsman shall have access to all of the department's written and electronic records and databases, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the ombudsman shall maintain the same classification that was designated by the department.

(7) (a) The ombudsman shall prepare a written report of the findings and recommendations, if any, of each investigation.

(b) The ombudsman shall make recommendations to the division if the ombudsman finds that:

- (i) a matter should be further considered by the division;
- (ii) an administrative act should be addressed, modified, or canceled;
- (iii) action should be taken by the division with regard to one of its employees;

or

- (iv) any other action should be taken by the division.

Amended by Chapter 75, 2009 General Session

62A-4a-209. Emergency placement.

(1) As used in this section:

(a) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

(b) "Relative" is as defined in Subsection 78A-6-307(1)(b).

(2) The division may use an emergency placement under Subsection 62A-4a-202.1(4)(b)(ii) when:

(a) the case worker has made the determination that:

- (i) the child's home is unsafe;
- (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and
- (iii) the child's custodial parent or guardian will agree to not remove the child from the home of the person that serves as the placement and not have any contact with the child until after the shelter hearing required by Section 78A-6-306;

(b) a person, with preference being given in accordance with Subsection (4), can be identified who has the ability and is willing to provide care for the child who would otherwise be placed in shelter care, including:

- (i) taking the child to medical, mental health, dental, and educational appointments at the request of the division; and
- (ii) making the child available to division services and the guardian ad litem; and
- (c) the person described in Subsection (2)(b) agrees to care for the child on an

emergency basis under the following conditions:

(i) the person meets the criteria for an emergency placement under Subsection (3);

(ii) the person agrees to not allow the custodial parent or guardian to have any contact with the child until after the shelter hearing unless authorized by the division in writing;

(iii) the person agrees to contact law enforcement and the division if the custodial parent or guardian attempts to make unauthorized contact with the child;

(iv) the person agrees to allow the division and the child's guardian ad litem to have access to the child;

(v) the person has been informed and understands that the division may continue to search for other possible placements for long-term care, if needed;

(vi) the person is willing to assist the custodial parent or guardian in reunification efforts at the request of the division, and to follow all court orders; and

(vii) the child is comfortable with the person.

(3) Except as otherwise provided in Subsection (5), before the division places a child in an emergency placement, the division:

(a) may request the name of a reference and may contact the reference to determine the answer to the following questions:

(i) would the person identified as a reference place a child in the home of the emergency placement; and

(ii) are there any other relatives or friends to consider as a possible emergency or long-term placement for the child;

(b) shall have the custodial parent or guardian sign an emergency placement agreement form during the investigation;

(c) (i) if the emergency placement will be with a relative of the child, shall comply with the background check provisions described in Subsection (7); or

(ii) if the emergency placement will be with a person other than a noncustodial parent or a relative, shall comply with the criminal background check provisions described in Section 78A-6-308 for adults living in the household where the child will be placed;

(d) shall complete a limited home inspection of the home where the emergency placement is made; and

(e) shall have the emergency placement approved by a family service specialist.

(4) (a) The following order of preference shall be applied when determining the person with whom a child will be placed in an emergency placement described in this section, provided that the person is willing, and has the ability, to care for the child:

(i) a noncustodial parent of the child in accordance with Section 78A-6-307;

(ii) a relative of the child;

(iii) subject to Subsection (4)(b), a friend designated by the custodial parent or guardian of the child, if the friend is a licensed foster parent; and

(iv) a shelter facility, former foster placement, or other foster placement designated by the division.

(b) Unless the division agrees otherwise, the custodial parent or guardian described in Subsection (4)(a)(iii) may designate up to two friends as a potential

emergency placement.

(5) (a) The division may, pending the outcome of the investigation described in Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial parent if, based on a limited investigation, prior to making the emergency placement, the division:

(i) determines that the noncustodial parent has regular, unsupervised visitation with the child that is not prohibited by law or court order;

(ii) determines that there is not reason to believe that the child's health or safety will be endangered during the emergency placement; and

(iii) has the custodial parent or guardian sign an emergency placement agreement.

(b) Either before or after making an emergency placement with the noncustodial parent of the child, the division may conduct the investigation described in Subsection (3)(a) in relation to the noncustodial parent.

(c) Before, or within one day, excluding weekends and holidays, after a child is placed in an emergency placement with the noncustodial parent of the child, the division shall conduct a limited:

(i) background check of the noncustodial parent, pursuant to Subsection (7); and

(ii) inspection of the home where the emergency placement is made.

(6) After an emergency placement, the division caseworker must:

(a) respond to the emergency placement's calls within one hour if the custodial parents or guardians attempt to make unauthorized contact with the child or attempt to remove the child;

(b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78A-6-306;

(c) contact the attorney general to schedule a shelter hearing;

(d) complete the placement procedures required in Section 78A-6-307; and

(e) continue to search for other relatives as a possible long-term placement, if needed.

(7) (a) The background check described in Subsection (3)(c)(i) shall include:

(i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification background check; and

(ii) a completed search of the Management Information System described in Section 62A-4a-1003.

(b) The division shall determine whether a person passes the background check described in this Subsection (7) pursuant to the provisions of Subsections 62A-2-120(2), (3), and (8).

(c) Notwithstanding Subsection (7)(b), the division may not place a child with an individual who is prohibited by court order from having access to that child.

Amended by Chapter 416, 2013 General Session

62A-4a-210. Definitions.

As used in this part:

- (1) "Activity" means an extracurricular, enrichment, or social activity.
- (2) "Age-appropriate" means a type of activity that is generally accepted as suitable for a child of the same age or level of maturity, based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for the child's age or age group.
- (3) "Caregiver" means a person with whom a child is placed in an out-of-home placement.
- (4) "Division" means the Division of Child and Family Services.
- (5) "Out-of-home placement" means the placement of a child in the division's custody outside of the child's home, including placement in a foster home, a residential treatment program, proctor care, or with kin.
- (6) "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions to maintain a child's health, safety, and best interest while at the same time encouraging the child's emotional and developmental growth.

Enacted by Chapter 67, 2014 General Session

62A-4a-211. Division responsibilities -- Normalizing lives of children.

- (1) A child who comes into care under this chapter is entitled to participate in age-appropriate activities for the child's emotional well-being and development of valuable life-coping skills.
- (2) The division shall make efforts to normalize the lives of children in the division's custody and to empower a caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of the division.
- (3) The division shall allow a caregiver to make important decisions, similar to the decisions that a parent is entitled to make, regarding the child's participation in activities.

Enacted by Chapter 67, 2014 General Session

62A-4a-212. Requirements for decision making -- Rulemaking authority.

- (1) (a) A caregiver shall use a reasonable and prudent parent standard in determining whether to permit a child to participate in an activity.
- (b) A caregiver shall consider:
 - (i) the child's age, maturity, and developmental level to maintain the overall health and safety of the child;
 - (ii) potential risk factors and the appropriateness of the activity;
 - (iii) the best interest of the child based on the caregiver's knowledge of the child;
 - (iv) the importance of encouraging the child's emotional and developmental growth;
 - (v) the importance of providing the child with the most family-like living experience possible; and

(vi) the behavioral history of the child and the child's ability to safely participate in the proposed activity.

(c) The division shall verify that private agencies providing out-of-home placement under contract with the division:

(i) promote and protect the ability of a child to participate in age-appropriate activities; and

(ii) implement policies consistent with this section.

(d) (i) A caregiver is not liable for harm caused to a child in an out-of-home placement if the child participates in an activity approved by the caregiver, when the caregiver has acted in accordance with a reasonable and prudent parent standard.

(ii) This section does not remove or limit any existing liability protection afforded by statute.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall adopt rules establishing the procedures for verifying that private agencies providing out-of-home placement under contract with the division comply with and promote this part.

Enacted by Chapter 67, 2014 General Session

62A-4a-250. Separate programs and procedures for minors committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect -- Attorney general responsibility.

(1) On or before July 1, 1998, the division shall have established programs designed to meet the needs of minors who have not been adjudicated as abused or neglected, but who are otherwise committed to the custody of the division by the juvenile court pursuant to Section 78A-6-117, and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense.

(2) (a) The processes and procedures designed to meet the needs of children who are abused or neglected, described in Part 2 and in Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, are not applicable to the minors described in Subsection (1).

(b) The procedures described in Subsection 78A-6-118(2)(a) are applicable to the minors described in Subsection (1).

(3) As of July 1, 1998, the attorney general's office has the responsibility to represent the division with regard to actions involving minors described in Subsection (1). Nothing in this section may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with Section 78A-6-115.

Amended by Chapter 3, 2008 General Session

62A-4a-301. Legislative finding.

The Legislature finds that there is a need to assist private and public agencies in identifying and establishing community-based education, service, and treatment

programs to prevent the occurrence and recurrence of abuse and neglect.

It is the purpose of this part to provide a means to increase prevention and treatment programs designed to reduce the occurrence or recurrence of child abuse and neglect.

Amended by Chapter 299, 2008 General Session

62A-4a-302. Definitions.

As used in this part, "council" means the Child Abuse Advisory Council established under Section 62A-4a-311.

Amended by Chapter 299, 2008 General Session

62A-4a-303. Director's responsibility.

The director shall:

(1) contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to establish voluntary community-based educational and service programs designed to reduce the occurrence or recurrence of abuse and neglect;

(2) facilitate the exchange of information between and among groups concerned with families and children;

(3) consult with appropriate state agencies, commissions, and boards to help determine the probable effectiveness, fiscal soundness, and need for proposed education and service programs for the prevention and treatment of abuse and neglect;

(4) develop policies to determine whether programs will be discontinued or will receive continuous funding;

(5) establish flexible fees and fee schedules based on the recipient's ability to pay for part or all of the costs of service received; and

(6) adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to carry out the purposes of this part.

Amended by Chapter 75, 2009 General Session

62A-4a-304. Contracts for services.

(1) (a) Contracts for services to prevent child abuse and neglect shall be awarded on the basis of probability of success, based in part on sound research data.

(b) Each contract entered into by the director under Section 62A-4a-303 shall contain a provision for the evaluation of services provided under the contract.

(2) Contract funds awarded for the treatment of victims of abuse and neglect are not a collateral source as described in Section 63M-7-502.

Amended by Chapter 299, 2008 General Session

Amended by Chapter 382, 2008 General Session

62A-4a-305. Prevention and treatment programs.

Programs contracted under this part shall be designed to provide voluntary primary abuse and neglect prevention, and voluntary or court-ordered treatment services, including, without limiting the generality of the foregoing, the following community-based programs:

(1) those relating to prenatal care, perinatal bonding, child growth and development, basic child care, care of children with special needs, and coping with family stress;

(2) those relating to crisis care, aid to parents, abuse counseling, support groups for abusive or potentially abusive parents and their children, and early identification of families where the potential for abuse and neglect exists;

(3) those clearly designed to prevent the occurrence or recurrence of abuse, neglect, sexual abuse, sexual exploitation, medical or educational neglect, and such other programs as the division and council may from time to time consider potentially effective in reducing the incidence of family problems leading to abuse or neglect; and

(4) those designed to establish and assist community resources that prevent abuse and neglect.

Amended by Chapter 75, 2009 General Session

62A-4a-306. Programs and services -- Public hearing requirements -- Review by local board of education.

(1) Before any abuse or neglect prevention or treatment program or service may be purchased or contracted for, the division shall conduct a public hearing and the council shall conduct a public hearing, to receive public comment on the specific program or service.

(2) Before any abuse or neglect prevention or treatment program or service which is intended for presentation in public schools may be purchased or contracted for, evidence shall be submitted to the division that the program or service has been approved by the local board of education of each school district which will be utilizing that program or service. The local board of education may grant the approval authority to the superintendent.

Amended by Chapter 75, 2009 General Session

62A-4a-307. Factors considered in award of contracts.

In awarding contracts under this part, consideration shall be given to factors such as need, diversity of geographic locations, coordination with or enhancement of existing services, and the extensive use of volunteers.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-308. Portion of funding provided by contractor.

The director may require that 25% of the funding for individual programs contracted by the director under this part be provided by the contractor operating the program. Contributions of materials, supplies, or physical facilities may be considered

as all or part of the funding provided by the contractor.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-309. Children's Account.

(1) There is created a restricted account within the General Fund known as the "Children's Account." The restricted account is for crediting of contributions from private sources and from appropriate revenues received under Section 26-2-12.5 for abuse and neglect prevention programs described in Section 62A-4a-305.

(2) Money shall be appropriated from the account to the division by the Legislature under the Utah Budgetary Procedures Act, and shall be drawn upon by the director in consultation with the executive director of the department.

(3) Except as provided in Subsection (4), the Children's Account may be used only to implement prevention programs described in Section 62A-4a-305, and may only be allocated to an entity that provides a one-to-one match, comprising a match from the community of at least 50% in cash and up to 50% in in-kind donations, which is 25% of the total funding received from the Children's Account.

(4) (a) The entity that receives the statewide evaluation contract is excepted from the cash-match provisions of Subsection (3).

(b) Upon recommendation of the executive director and the council, the division may reduce or waive the match requirements described in Subsection (3) for an entity, if the division determines that imposing the requirements would prohibit or limit the provision of services needed in a particular geographic area.

Amended by Chapter 278, 2010 General Session

62A-4a-310. Funds -- Transfers and gifts.

On behalf of the Children's Account, the department, through the division, may accept transfers, grants, gifts, bequests, or any money made available from any source to implement this part.

Amended by Chapter 278, 2010 General Session

62A-4a-311. Child Abuse Advisory Council -- Creation -- Membership -- Expenses.

(1) (a) There is established the Child Abuse Advisory Council composed of no more than 25 members who are appointed by the division.

(b) Except as required by Subsection (1)(c), as terms of current council members expire, the division shall appoint each new member or reappointed member to a four-year term.

(c) Notwithstanding the requirements of Subsection (1)(b), the division shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(d) The council shall have geographic, economic, gender, cultural, and

philosophical diversity.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(2) The council shall elect a chairperson from its membership at least biannually.

(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(4) The council shall hold a public meeting quarterly. Within budgetary constraints, meetings may also be held on the call of the chair, or of a majority of the members. A majority of the members currently appointed to the council constitute a quorum at any meeting and the action of the majority of the members present shall be the action of the council.

(5) The council shall:

(a) advise the division on matters relating to abuse and neglect; and

(b) recommend to the division how funds contained in the Children's Account should be allocated.

Amended by Chapter 278, 2010 General Session

Amended by Chapter 286, 2010 General Session

62A-4a-401. Legislative purpose -- Report and study items.

(1) It is the purpose of this part to protect the best interests of children, offer protective services to prevent harm to children, stabilize the home environment, preserve family life whenever possible, and encourage cooperation among the states in dealing with the problem of abuse or neglect.

(2) The division shall, during the 2013 interim, report to the Health and Human Services Interim Committee on:

(a) the division's efforts to use existing staff and funds while shifting resources away from foster care and to in-home services;

(b) a proposal to:

(i) keep sibling groups together, as much as possible; and

(ii) provide necessary services to available structured foster families to avoid sending foster children to proctor homes;

(c) the disparity between foster care payments and adoption subsidies, and whether an adjustment to those rates could result in savings to the state; and

(d) the utilization of guardianship, in the event an appropriate adoptive placement is not available after a termination of parental rights.

(3) The Health and Human Services Interim Committee shall, during the 2013 interim, study whether statewide practice standards should be implemented to assist the Child Welfare Parental Defense Program with its mission to provide legal services to indigent parents whose children are in the custody of the division.

Amended by Chapter 171, 2013 General Session

62A-4a-402. Definitions.

As used in this part:

(1) "A person responsible for a child's care" means the child's parent, guardian, or other person responsible for the child's care, whether in the same home as the child, a relative's home, a group, family, or center day care facility, a foster care home, or a residential institution.

(2) "Subject" or "subject of the report" means any person reported under this part, including, but not limited to, a child, parent, guardian, or other person responsible for a child's care.

Amended by Chapter 299, 2008 General Session

62A-4a-403. Reporting requirements.

(1) (a) Except as provided in Subsection (2), when any person including persons licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse Practice Act, has reason to believe that a child has been subjected to abuse or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, that person shall immediately notify the nearest peace officer, law enforcement agency, or office of the division.

(b) Upon receipt of the notification described in Subsection (1)(a), the peace officer or law enforcement agency shall immediately notify the nearest office of the division. If an initial report of abuse or neglect is made to the division, the division shall immediately notify the appropriate local law enforcement agency. The division shall, in addition to its own investigation, comply with and lend support to investigations by law enforcement undertaken pursuant to a report made under this section.

(2) Subject to Subsection (3), the notification requirements of Subsection (1) do not apply to a clergyman or priest, without the consent of the person making the confession, with regard to any confession made to the clergyman or priest in the professional character of the clergyman or priest in the course of discipline enjoined by the church to which the clergyman or priest belongs, if:

(a) the confession was made directly to the clergyman or priest by the perpetrator; and

(b) the clergyman or priest is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.

(3) (a) When a clergyman or priest receives information about abuse or neglect from any source other than confession of the perpetrator, the clergyman or priest is required to give notification on the basis of that information even though the clergyman or priest may have also received a report of abuse or neglect from the confession of the perpetrator.

(b) Exemption of notification requirements for a clergyman or priest does not exempt a clergyman or priest from any other efforts required by law to prevent further

abuse or neglect by the perpetrator.

Amended by Chapter 299, 2008 General Session

62A-4a-404. Fetal alcohol syndrome and drug dependency -- Reporting requirements.

When an individual, including a licensee under the Medical Practice Act or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that the child, at the time of birth, has fetal alcohol syndrome, fetal alcohol spectrum disorder, or fetal drug dependency, the individual shall report that determination to the division as soon as possible.

Amended by Chapter 293, 2012 General Session

62A-4a-405. Death of child -- Reporting requirements.

(1) Any person who has reason to believe that a child has died as a result of abuse or neglect shall report that fact to:

- (a) the local law enforcement agency, who shall report to the county attorney or district attorney as provided under Section 17-18a-202 or 17-18a-203; and
- (b) the appropriate medical examiner in accordance with Title 26, Chapter 4, Utah Medical Examiner Act.

(2) After receiving a report described in Subsection (1), the medical examiner shall investigate and report the medical examiner's findings to:

- (a) the police;
- (b) the appropriate county attorney or district attorney;
- (c) the attorney general's office;
- (d) the division; and
- (e) if the institution making the report is a hospital, to that hospital.

Amended by Chapter 237, 2013 General Session

62A-4a-406. Photographs.

(1) Any physician, surgeon, medical examiner, peace officer, law enforcement official, or public health officer or official may take photographs of the areas of trauma visible on a child and, if medically indicated, perform radiological examinations.

(2) Photographs may be taken of the premises or of objects relevant to a reported circumstance of abuse or neglect.

(3) Photographs or X-rays, and all other medical records pertinent to an investigation for abuse or neglect shall be made available to the division, law enforcement officials, and the court.

Amended by Chapter 299, 2008 General Session

62A-4a-407. Protective custody.

(1) A physician examining or treating a child may take the child into protective

custody not to exceed 72 hours, without the consent of the child's parent, guardian, or any other person responsible for the child's care or exercising temporary or permanent control over the child, when the physician has reason to believe that the child's life or safety will be in danger unless protective custody is exercised.

(2) The person in charge of a hospital or similar medical facility may retain protective custody of a child suspected of being abused or neglected, when he reasonably believes the facts warrant that retention. This action may be taken regardless of whether additional medical treatment is required, and regardless of whether the person responsible for the child's care requests the child's return.

(3) The division shall be immediately notified of protective custody exercised under this section. Protective custody under this section may not exceed 72 hours without an order of the district or juvenile court.

(4) A person who takes a child into, or retains a child in, protective custody under this section shall document:

(a) the grounds upon which the child was taken into, or retained in, protective custody; and

(b) the nature of, and necessity for, any medical care or treatment provided to the child.

Amended by Chapter 75, 2006 General Session

62A-4a-408. Written reports.

(1) Reports made pursuant to this part shall be followed by a written report within 48 hours, if requested by the division. The division shall immediately forward a copy of that report to the statewide central register, on forms supplied by the register.

(2) If, in connection with an intended or completed abortion by a minor, a physician is required to make a report of incest or abuse of a minor, the report may not include information that would in any way disclose that the report was made in connection with:

(a) an abortion; or

(b) a consultation regarding an abortion.

Amended by Chapter 207, 2006 General Session

62A-4a-409. Investigation by division -- Temporary protective custody -- Preremoval interviews of children.

(1) (a) The division shall make a thorough preremoval investigation upon receiving either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, when there is reasonable cause to suspect that a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug dependency exists.

(b) The primary purpose of the investigation described in Subsection (1)(a) shall be protection of the child.

(2) The preremoval investigation described in Subsection (1)(a) shall include the same investigative requirements described in Section 62A-4a-202.3.

(3) The division shall make a written report of its investigation that shall include

a determination regarding whether the alleged abuse or neglect is supported, unsupported, or without merit.

(4) (a) The division shall use an interdisciplinary approach when appropriate in dealing with reports made under this part.

(b) For this purpose, the division shall convene appropriate interdisciplinary "child protection teams" to assist it in its protective, diagnostic, assessment, treatment, and coordination services.

(c) A representative of the division shall serve as the team's coordinator and chair. Members of the team shall serve at the coordinator's invitation. Whenever possible, the team shall include representatives of:

- (i) health, mental health, education, and law enforcement agencies;
- (ii) the child;
- (iii) parent and family support groups unless the parent is alleged to be the perpetrator; and
- (iv) other appropriate agencies or individuals.

(5) If a report of neglect is based upon or includes an allegation of educational neglect, the division shall immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103.

(6) When the division completes its initial investigation under this part, it shall give notice of that completion to the person who made the initial report.

(7) Division workers or other child protection team members have authority to enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged abuse or neglect, upon notice to parents of their rights under the Child Abuse Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

(8) With regard to any interview of a child prior to removal of that child from the child's home:

(a) except as provided in Subsection (8)(b) or (c), the division shall inform a parent of the child prior to the interview of:

- (i) the specific allegations concerning the child; and
- (ii) the time and place of the interview;
- (b) if a child's parent or stepparent, or a parent's paramour has been identified as the alleged perpetrator, the division is not required to comply with Subsection (8)(a);
- (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family is unknown, the division may conduct a minimal interview or conversation, not to exceed 15 minutes, with the child prior to complying with Subsection (8)(a);

(d) in all cases described in Subsection (8)(b) or (c), a parent of the child shall be notified as soon as practicable after the child has been interviewed, but in no case later than 24 hours after the interview has taken place;

(e) a child's parents shall be notified of the time and place of all subsequent interviews with the child; and

(f) the child shall be allowed to have a support person of the child's choice present, who:

- (i) may include:
 - (A) a school teacher;

- (B) an administrator;
- (C) a guidance counselor;
- (D) a child care provider;
- (E) a family member;
- (F) a family advocate; or
- (G) clergy; and

(ii) may not be a person who is alleged to be, or potentially may be, the perpetrator.

(9) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through 62A-4a-202.3, a division worker or child protection team member may take a child into protective custody and deliver the child to a law enforcement officer, or place the child in an emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent to the child's removal from the child's original environment. Control and jurisdiction over the child is determined by the provisions of Title 78A, Chapter 6, Juvenile Court Act of 1996, and as otherwise provided by law.

(10) With regard to cases in which law enforcement has or is conducting an investigation of alleged abuse or neglect of a child:

(a) the division shall coordinate with law enforcement to ensure that there is an adequate safety plan to protect the child from further abuse or neglect; and

(b) the division is not required to duplicate an aspect of the investigation that, in the division's determination, has been satisfactorily completed by law enforcement.

Amended by Chapter 239, 2010 General Session

62A-4a-410. Immunity from liability -- Exceptions.

(1) Except as provided in Subsection (3), any person, official, or institution participating in good faith in making a report, taking photographs or X-rays, assisting an investigator from the division, serving as a member of a child protection team, or taking a child into protective custody pursuant to this part, is immune from any liability, civil or criminal, that otherwise might result by reason of those actions.

(2) This section does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(3) The immunity described in Subsection (1) does not apply if the person, official, or institution:

(a) acted or failed to act through fraud or willful misconduct;

(b) in a judicial or administrative proceeding, intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry in the proceeding; or

(c) intentionally or knowingly:

(i) fabricated evidence; or

(ii) except as provided in Subsection (4), with a conscious disregard for the rights of others, failed to disclose evidence that:

(A) was known to the person, official, or institution; and

(B) (I) was known by the person, official, or institution to be relevant to a material issue or matter of inquiry in a pending judicial or administrative proceeding if the person, official, or institution knew of the pending judicial or administrative proceeding; or

(II) was known by the person, official, or institution to be relevant to a material issue or matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was requested of the employee by a party to the proceeding or counsel for a party to the proceeding.

(4) Immunity is not lost under Subsection (3)(c)(ii), if the person, official, or institution:

(a) failed to disclose evidence described in Subsection (3)(c)(ii), because the person, official, or institution is prohibited by law from disclosing the evidence; or

(b) (i) pursuant to the provisions of 45 CFR 164.502(g)(5), refused to disclose evidence described in Subsection (3)(c)(ii) to a person who requested the evidence; and

(ii) after refusing to disclose the evidence under Subsection (4)(b)(i), complied with or responded to a valid court order or valid subpoena received by the person, official, or institution to disclose the evidence described in Subsection (3)(c)(ii).

Amended by Chapter 382, 2008 General Session

Amended by Chapter 395, 2008 General Session

62A-4a-411. Failure to report -- Criminal penalty.

Any person, official, or institution required to report a case of suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, who willfully fails to do so is guilty of a class B misdemeanor. Action for failure to report must be commenced within four years from the date of knowledge of the offense and the willful failure to report.

Amended by Chapter 299, 2008 General Session

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63G, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a minor who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a minor who is the subject of a report;

(e) except as provided in Subsection 63G-2-202(10), a subject of the report, the

natural parents of the child, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before the court, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

(k) any person identified in the report as a perpetrator or possible perpetrator of abuse or neglect, after being advised of the screening prohibition in Subsection (2);

(l) except as provided in Subsection 63G-2-202(10), a person filing a petition for a child protective order on behalf of a child who is the subject of the report; and

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Sections 78B-6-128 and 78B-6-130.

(2) (a) A person, unless listed in Subsection (1), may not request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) (a) Except as provided in Section 62A-4a-1007 and Subsection (3)(b), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(b) Notwithstanding any other provision of law, excluding Section 78A-6-317, but including this chapter and Title 63G, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in its possession available under Subsection (1)(e) to a subject of the report or a parent of a

child, the division shall remove from the report or other information only the names, addresses, and telephone numbers of individuals or specific information that could:

- (i) identify the referent;
- (ii) impede a criminal investigation; or
- (iii) endanger a person's safety.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

(6) A child-placing agency or person who receives a report in connection with a preplacement adoptive evaluation pursuant to Sections 78B-6-128 and 78B-6-130:

- (a) may provide this report to the person who is the subject of the report; and
- (b) may provide this report to a person who is performing a preplacement adoptive evaluation in accordance with the requirement of Sections 78B-6-128 and 78B-6-130, or to a licensed child-placing agency or to an attorney seeking to facilitate an adoption.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 87, 2008 General Session

Amended by Chapter 299, 2008 General Session

Amended by Chapter 382, 2008 General Session

62A-4a-414. Interviews of children -- Recording required -- Exceptions.

(1) (a) Except as provided in Subsection (4), interviews of children during an investigation in accordance with Section 62A-4a-409, and involving allegations of sexual abuse, sexual exploitation, severe abuse, or severe neglect of a child, shall be conducted only under the following conditions:

- (i) the interview shall be recorded visually and aurally on film, videotape, or by other electronic means;
- (ii) both the interviewer and the child shall be simultaneously recorded and visible on the final product;
- (iii) the time and date of the interview shall be continuously and clearly visible to any subsequent viewer of the recording; and
- (iv) the recording equipment shall run continuously for the duration of the interview.

(b) This Subsection (1) does not apply to initial or minimal interviews conducted in accordance with Subsection 62A-4a-409(8)(b) or (c).

(2) Interviews conducted in accordance with Subsection (1) shall be carried out in an existing Children's Justice Center or in a soft interview room, when available.

(a) If the Children's Justice Center or a soft interview room is not available, the interviewer shall use the best setting available under the circumstances.

(b) Except as provided in Subsection (4), if the equipment required under

Subsection (1) is not available, the interview shall be audiotaped, provided that the interviewer shall clearly state at the beginning of the tape:

- (i) the time, date, and place of the interview;
- (ii) the full name and age of the child being interviewed; and
- (iii) that the equipment required under Subsection (1) is not available and why.

(3) Except as provided in Subsection (4), all other investigative interviews shall be audiotaped using electronic means. At the beginning of the tape, the worker shall state clearly the time, date, and place of the meeting, and the full name and age of the child in attendance.

(4) (a) Subject to Subsection (4)(b), an interview described in this section may be conducted without being taped if the child:

- (i) is at least nine years old;
- (ii) refuses to have the interview audio taped; and
- (iii) refuses to have the interview video taped.

(b) If, pursuant to Subsection (4)(a), an interview is conducted without being taped, the child's refusal shall be documented as follows:

- (i) the interviewer shall attempt to get the child's refusal on tape, including the reasons for the refusal; or
- (ii) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the interviewer shall:

(A) state on the tape that the child is present, but has refused to have the interview, refusal, or the reasons for the refusal taped; or

(B) if complying with Subsection (4)(b)(ii)(A) will result in the child, who would otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall document, in writing, that the child refused to allow the interview to be taped and the reasons for that refusal.

(c) The division shall track the number of interviews under this section that are not taped, and the number of refusals that are not taped, for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals, or taped refusals, than other interviewers.

Amended by Chapter 239, 2010 General Session

62A-4a-415. Law enforcement interviews of children in state custody.

(1) Except as provided in Subsection (2), the division may not consent to the interview of a child in the division's custody by a law enforcement officer, unless consent for the interview is obtained from the child's guardian ad litem.

(2) Subsection (1) does not apply if a guardian ad litem is not appointed for the child.

Enacted by Chapter 322, 2010 General Session

62A-4a-501. Harboring a runaway -- Reporting requirements -- Division to provide assistance -- Affirmative defense -- Providing shelter after notice.

(1) As used in this section:

- (a) "Harbor" means to provide shelter in:
 - (i) the home of the person who is providing the shelter; or
 - (ii) any structure over which the person providing the shelter has any control.
 - (b) "Receiving center" is as defined in Section 62A-7-101.
 - (c) "Runaway" means a minor, other than an emancipated minor, who is absent from the home or lawfully prescribed residence of the parent or legal guardian of the minor without the permission of the parent or legal guardian.
 - (d) "Temporary homeless youth shelter" means a facility that:
 - (i) provides temporary shelter to a runaway; and
 - (ii) is licensed by the Office of Licensing, created in Section 62A-1-105, as a residential support program.
 - (e) "Youth services center" means a center established by, or under contract with, the Division of Juvenile Justice Services, created in Section 62A-1-105, to provide youth services, as defined in Section 62A-7-101.
- (2) Except as provided in Subsection (3), a person is guilty of a class B misdemeanor if the person:
- (a) knowingly and intentionally harbors a minor;
 - (b) knows at the time of harboring the minor that the minor is a runaway;
 - (c) fails to notify one of the following, by telephone or other reasonable means, of the location of the minor:
 - (i) the parent or legal guardian of the minor;
 - (ii) the division; or
 - (iii) a youth services center; and
 - (d) fails to notify a person described in Subsection (2)(c) within eight hours after the later of:
 - (i) the time that the person becomes aware that the minor is a runaway; or
 - (ii) the time that the person begins harboring the minor.
- (3) A person described in Subsection (2) is not guilty of a violation of Subsection (2) and is not required to comply with Subsections (2)(c) and (d), if:
- (a) a court order is issued authorizing a peace officer to take the minor into custody; and
 - (b) the person notifies a peace officer or the nearest detention center, as defined in Section 62A-7-101, by telephone or other reasonable means, of the location of the minor, within eight hours after the later of:
 - (i) the time that the person becomes aware that the minor is a runaway; or
 - (ii) the time that the person begins harboring the minor.
- (4) Nothing in this section limits the obligation of a person to report child abuse or neglect in accordance with Section 62A-4a-403.
- (5) Except as provided in Subsection (6), a temporary homeless youth shelter shall notify:
- (a) the parent or legal guardian of a minor within eight hours after the later of:
 - (i) the time that the temporary homeless youth shelter becomes aware that the minor is a runaway; or
 - (ii) the time that the temporary homeless youth shelter begins harboring the minor; and

(b) the division or a youth services center, within 48 hours after the later of:
(i) the time that the temporary homeless youth shelter becomes aware that a minor is a runaway; or

(ii) the time that the temporary homeless youth shelter begins harboring the minor.

(6) A temporary homeless youth shelter is not required to comply with Subsection (5) if:

(a) a court order is issued authorizing a peace officer to take the minor into custody; and

(b) the temporary homeless youth shelter notifies a peace officer or the nearest detention center, as defined in Section 62A-7-101, by telephone or other reasonable means, of the location of the minor, within eight hours after the later of:

(i) the time that the person becomes aware that the minor is a runaway; or

(ii) the time that the person begins harboring the minor.

(7) It is an affirmative defense to the crime described in Subsection (2) that:

(a) the person failed to provide notice as described in Subsection (2) or (3) due to circumstances beyond the control of the person providing the shelter; and

(b) the person provided the notice described in Subsection (2) or (3) as soon as it was reasonably practicable to provide the notice.

(8) Upon receipt of a report that a runaway is being harbored by a person:

(a) a youth services center shall:

(i) notify the parent or legal guardian that a report has been made; and

(ii) inform the parent or legal guardian of assistance available from the youth services center; or

(b) the division shall:

(i) determine whether the runaway is abused, neglected, or dependent; and

(ii) if appropriate, make a referral for services for the runaway.

(9) A parent or legal guardian of a runaway who is aware that the runaway is being harbored may notify a law enforcement agency and request assistance in retrieving the runaway. The local law enforcement agency may assist the parent or legal guardian in retrieving the runaway.

(10) Nothing in this section prohibits a person or a temporary homeless youth shelter from continuing to provide shelter to a runaway, after giving the notice described in Subsections (2) through (6), if:

(a) a parent or legal guardian of the minor consents to the continued provision of shelter; or

(b) a peace officer or a parent or legal guardian of the minor fails to retrieve the runaway.

(11) Nothing in this section prohibits a person or a temporary homeless youth shelter from providing shelter to a non-emancipated minor whose parents or legal guardians have intentionally:

(a) ceased to maintain physical custody of the minor;

(b) failed to make reasonable arrangements for the safety, care, and physical custody of the minor; and

(c) failed to provide the minor with food, shelter, or clothing.

(12) Nothing in this section prohibits:

(a) a receiving center or a youth services center from providing shelter to a runaway in accordance with the requirements of Title 62A, Chapter 7, Juvenile Justice Services, and the rules relating to a receiving center or a youth services center; or

(b) a government agency from taking custody of a minor as otherwise provided by law.

Amended by Chapter 312, 2014 General Session

62A-4a-601. Definitions.

For purposes of this part:

(1) "Child placing" means:

(a) receiving, accepting, or providing custody or care for a child, temporarily or permanently, for the purpose of finding a person to adopt the child; or

(b) placing a child, temporarily or permanently, in a home for adoption or substitute care.

(2) "Child placing agency" means an individual, agency, firm, corporation, association, or group children's home that engages in child placing.

Amended by Chapter 281, 2006 General Session

62A-4a-602. Licensure requirements -- Prohibited acts.

(1) No person, agency, firm, corporation, association, or group children's home may engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the Office of Licensing, in accordance with Chapter 2 of this title. When a child placing agency's license is suspended or revoked in accordance with that chapter, the care, control, or custody of any child who has been in the care, control, or custody of that agency shall be transferred to the division.

(2) (a) An attorney, physician, or other person may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for that assistance.

(b) An attorney, physician, or other person may not:

(i) issue or cause to be issued to any person a card, sign, or device indicating that he is available to provide that assistance;

(ii) cause, permit, or allow any sign or marking indicating that he is available to provide that assistance, on or in any building or structure;

(iii) announce or cause, permit, or allow an announcement indicating that he is available to provide that assistance, to appear in any newspaper, magazine, directory, or on radio or television; or

(iv) advertise by any other means that he is available to provide that assistance.

(3) Nothing in this part precludes payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings; and no provision of this part abrogates the right

of procedures for independent adoption as provided by law.

(4) In accordance with federal law, only agents or employees of the division and of licensed child placing agencies may certify to the United States Immigration and Naturalization Service that a family meets the division's preadoption requirements.

(5) (a) Beginning May 1, 2000, neither a licensed child placing agency nor any attorney practicing in this state may place a child for adoption, either temporarily or permanently, with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and 78B-6-137.

(b) Beginning May 1, 2000, the division, as a licensed child placing agency, may not place a child in foster care with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and 78B-6-137. However, nothing in this Subsection (5)(b) limits the placement of a child in foster care with the child's biological or adoptive parent.

(c) Beginning May 1, 2000, with regard to children who are in the custody of the state, the division shall establish a policy providing that priority for foster care and adoptive placement shall be provided to families in which both a man and a woman are legally married under the laws of this state. However, nothing in this Subsection (5)(c) limits the placement of a child with the child's biological or adoptive parent.

Amended by Chapter 3, 2008 General Session

62A-4a-603. Injunction -- Enforcement by county attorney or attorney general.

(1) The division or any interested person may commence an action in district court to enjoin any person, agency, firm, corporation, or association violating Section 62A-4a-602.

(2) A county attorney or the attorney general shall institute legal action as necessary to enforce the provisions of Section 62A-4a-602 when informed of any alleged violation. If the county attorney does not take action within 30 days after being informed, the attorney general may be requested to take action, and shall then institute legal proceedings in place of the county attorney.

(3) In addition to the remedies provided in Subsections (1) and (2), any person, agency, firm, corporation, or association found to be in violation of Section 62A-4a-602 shall forfeit all proceeds identified as resulting from the transaction, and may also be assessed a civil penalty of not more than \$10,000 for each violation. Every act in violation of Section 62A-4a-602, including each placement or attempted placement of a child, is a separate violation.

(4) (a) All amounts recovered as penalties under Subsection (3) shall be placed in the General Fund of the prosecuting county, or in the state General Fund if the attorney general prosecutes.

(b) If two or more governmental entities are involved in the prosecution, the penalty amounts recovered shall be apportioned by the court among the entities, according to their involvement.

(5) A judgment ordering the payment of any penalty or forfeiture under

Subsection (3) constitutes a lien when recorded in the judgment docket, and has the same effect and is subject to the same rules as a judgment for money in a civil action.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-605. Establishing proof of authority.

A child placing agency is not required to present its license, issued under Chapter 2 of this title, or its certificate of incorporation, or proof of its authority to consent to adoption, as proof of its authority in any proceeding in which it is an interested party, unless the court or a party to the proceeding requests that the agency or its representative establish proof of authority.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-606. Child placing agency responsibility for educational services -- Payment of costs.

(1) A child placing agency shall ensure that the requirements of Subsections 53A-11-101.5(2) and 53A-11-101.7(1) are met through the provision of appropriate educational services for all children served in the state by the agency.

(2) If the educational services are to be provided through a public school, and:

(a) the custodial parent or legal guardian resides outside the state, then the child placing agency shall pay all educational costs required under Sections 53A-2-205 and 53A-12-102; or

(b) the custodial parent or legal guardian resides within the state, then the child placing agency shall pay all educational costs required under Section 53A-12-102.

(3) Children in the custody or under the care of a Utah state agency are exempt from the payment of fees required under Subsection (2).

(4) A public school shall admit any child living within its school boundaries who is under the supervision of a child placing agency upon payment by the agency of the tuition and fees required under Subsection (2).

Amended by Chapter 81, 2007 General Session

62A-4a-607. Promotion of adoption -- Agency notice to potential adoptive parents.

(1) (a) The division and all child placing agencies licensed under this part shall promote adoption when that is a possible and appropriate alternative for a child. Specifically, in accordance with Section 62A-4a-205.6, the division shall actively promote the adoption of all children in its custody who have a final plan for termination of parental rights pursuant to Section 78A-6-314 or a primary permanency goal of adoption.

(b) Beginning May 1, 2000, the division may not place a child for adoption, either temporarily or permanently, with any individual or individuals who do not qualify for adoptive placement pursuant to the requirements of Sections 78B-6-117, 78B-6-102, and 78B-6-137.

(2) The division shall obtain or conduct research of prior adoptive families to determine what families may do to be successful with their adoptive children and shall make this research available to potential adoptive parents.

(3) (a) A child placing agency licensed under this part shall inform each potential adoptive parent with whom it is working that:

- (i) children in the custody of the state are available for adoption;
- (ii) Medicaid coverage for medical, dental, and mental health services may be available for these children;
- (iii) tax benefits, including the tax credit provided for in Section 59-10-1104, and financial assistance may be available to defray the costs of adopting these children;
- (iv) training and ongoing support may be available to the adoptive parents of these children; and
- (v) information about individual children may be obtained by contacting the division's offices or its Internet site as explained by the child placing agency.

(b) A child placing agency shall:

(i) provide the notice required by Subsection (3)(a) at the earliest possible opportunity; and

(ii) simultaneously distribute a copy of the pamphlet prepared by the division in accordance with Subsection (3)(d).

(c) As a condition of licensure, the child placing agency shall certify to the Office of Licensing at the time of license renewal that it has complied with the provisions of this section.

(d) Before July 1, 2000, the division shall:

(i) prepare a pamphlet that explains the information that is required by Subsection (3)(a); and

(ii) regularly distribute copies of the pamphlet described in Subsection (3)(d)(i) to child placing agencies.

(e) The division shall respond to any inquiry made as a result of the notice provided in Subsection (3)(a).

Amended by Chapter 3, 2008 General Session

62A-4a-608. Choose Life Adoption Support Restricted Account.

(1) There is created in the General Fund the "Choose Life Adoption Support Restricted Account."

(2) The account shall be funded by:

(a) contributions deposited into the Choose Life Adoption Support Restricted Account in accordance with Section 41-1a-422;

(b) appropriations to the account by the Legislature;

(c) private contributions; and

(d) donations or grants from public or private entities.

(3) The Legislature shall appropriate money in the account to the division.

(4) The division shall distribute the funds in the account to one or more charitable organizations that:

(a) qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue

Code;

(b) have as part of their primary mission the support, promotion, and education of adoption programs; and

(c) are licensed or registered to do business within the state in accordance with state law.

(5) (a) An organization described in Subsection (4) may apply to the division to receive a distribution in accordance with Subsection (4).

(b) An organization that receives a distribution from the division in accordance with Subsection (4) shall expend the distribution only to:

(i) produce and distribute educational and promotional materials on adoption;

(ii) conduct educational courses on adoption; and

(iii) provide other programs that support adoption.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules providing procedures and requirements for an organization to apply to the division to receive a distribution under Subsection (4).

Enacted by Chapter 438, 2011 General Session

62A-4a-701. Interstate Compact on Placement of Children -- Text.

The Interstate Compact on the Placement of Children is hereby enacted and entered into with all other jurisdictions that legally join in the compact which is, in form, substantially as follows: INTERSTATE COMPACT ON PLACEMENT OF CHILDREN
ARTICLE I Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children so that:

(1) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide necessary and desirable care.

(2) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(3) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(4) Appropriate jurisdictional arrangements for the care of the children will be promoted. ARTICLE II Definitions

As used in this compact:

(1) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(2) "Sending agency" means a party state, officer, or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, Indian tribe, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(3) "Receiving state" means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and

whether for placement with state or local public authorities or for placement with private agencies or persons.

(4) "Placement" means the arrangement for the care of a child in a family free, adoptive, or boarding home, or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution, primarily educational in character, and any hospital or other medical facility.

ARTICLE III Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state.

The notice shall contain:

- (a) The name, date, and place of birth of the child.
- (b) The identity and address or addresses of the parents or legal guardian.
- (c) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child.
- (d) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.
- (e) Any public officer or agency in a receiving agency state which is in receipt of a notice pursuant to Paragraph (2) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.
- (f) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and

disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent any agency authorized to place children in the receiving agency from performing services or acting as agent in the receiving agency jurisdiction for a private charitable agency of the sending agency; nor to prevent the receiving agency from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in Paragraph (1) above. ARTICLE VI Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship. ARTICLE VII Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of the party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact. ARTICLE VIII Limitations

This compact shall not apply to:

(1) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(2) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law. ARTICLE IX Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, and with the

consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal. ARTICLE X Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-702. Financial responsibility.

Financial responsibility for a child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall, in the first instance, be determined in accordance with the provisions of Article V of the compact. However, in the event of partial or complete default of performance thereunder, the provisions of Title 78B, Chapter 12, Utah Child Support Act, may also be invoked.

Amended by Chapter 3, 2008 General Session

62A-4a-703. Division as public authority.

The "appropriate public authorities," as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the division. The division shall receive and act with reference to notices required by Article III of the compact.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-704. Director as authority.

As used in Paragraph (1) of Article V of the Interstate Compact on the Placement of Children, "appropriate authority in the receiving state," with reference to this state, means the director of the division.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-705. Fulfillment of requirements.

Requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under Part 2 of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state, or a subdivision thereof, as contemplated by Paragraph (2) of Article V of the Interstate Compact on the Placement of Children.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-706. Jurisdiction over delinquent children.

Any court having jurisdiction to place delinquent children may place such a child in an institution in another state, pursuant to Article VI of the Interstate Compact on the Placement of Children, and shall retain jurisdiction as provided in Article V of the compact.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-707. Executive -- Authority.

As used in Article VII of the Interstate Compact on the Placement of Children, "executive" means the executive director of the department. The executive director is authorized to appoint a compact administrator in accordance with the terms of Article VII of the compact.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-708. Existing authority for child placement continues.

Any person who, under any law of this state other than this part or the interstate compact established under Section 62A-4a-701, has authority to make or assist in making the placement of a child, shall continue to have the ability lawfully to make or assist in making that placement, and the provisions of Part 6 of this chapter and of Title 78B, Chapter 6, Part 1, Utah Adoption Act, continue to apply.

Amended by Chapter 3, 2008 General Session

62A-4a-709. Medical assistance identification.

(1) As used in this section:

(a) "Adoption assistance" means financial support to adoptive parents provided under the Adoption Assistance and Child Welfare Act of 1980, Titles IV (e) and XIX of the Social Security Act.

(b) "Adoption assistance agreement" means a written agreement between the division and adoptive parents or between any state and adoptive parents, providing for adoption assistance.

(c) "Interstate compact" means an agreement executed by the division with any other state, under the authority granted in Section 62A-4a-907.

(2) The Employment Development Division in the Department of Workforce

Services and the Division of Health Care Financing shall cooperate with the division and comply with interstate compacts.

(3) A child who is a resident of this state and is the subject of an interstate compact is entitled to receive medical assistance identification from the Employment Development Division in the Department of Workforce Services and the Division of Health Care Financing by filing a certified copy of his adoption assistance agreement with that office. The adoptive parents shall annually provide that office with evidence, verifying that the adoption assistance agreement is still effective.

(4) The Employment Development Division in the Department of Workforce Services shall consider the holder of medical assistance identification received under this section as it does any other holder of medical assistance identification received under an adoption assistance agreement executed by the division.

(5) The submission of any claim for payment or reimbursement under this section that is known to be false, misleading, or fraudulent is punishable as a third degree felony.

Amended by Chapter 81, 2005 General Session

62A-4a-710. Interjurisdictional home study report.

(1) The state of Utah may request a home study report from another state or an Indian Tribe for purposes of assessing the safety and suitability of placing a child in a home outside of the jurisdiction of the state of Utah.

(2) The state of Utah may not impose any restriction on the ability of a state agency administering, or supervising the administration of, a state program operated under a state plan approved under Section 42 U.S.C. 671 to contract with a private agency to conduct a home study report described in Subsection (1).

(3) When the state of Utah receives a home study report described in Subsection (1), the home study report shall be considered to meet all requirements imposed by the state of Utah for completion of a home study before a child is placed in a home, unless, within 14 days after the day on which the report is received, the state of Utah determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child.

Enacted by Chapter 152, 2007 General Session

62A-4a-801. Definitions.

As used in this part:

(1) "Hospital" means a general acute hospital, as that term is defined in Section 26-21-2, that is:

- (a) equipped with an emergency room;
- (b) open 24 hours a day, seven days a week; and
- (c) employs full-time health care professionals who have emergency medical services training.

(2) "Newborn child" means a child who is approximately 72 hours of age or younger, as determined within a reasonable degree of medical certainty.

Enacted by Chapter 134, 2001 General Session

62A-4a-802. Safe relinquishment of a newborn child.

(1) (a) A parent or a parent's designee may safely relinquish a newborn child at a hospital in accordance with the provisions of this part and retain complete anonymity, so long as the child has not been subject to abuse or neglect.

(b) Safe relinquishment of a newborn child who has not otherwise been subject to abuse or neglect shall not, in and of itself, constitute neglect as defined in Section 78A-6-105, and the child shall not be considered a neglected child, as defined in Section 78A-6-105, so long as the relinquishment is carried out in substantial compliance with the provisions of this part.

(2) (a) Personnel employed by a hospital shall accept a newborn child that is relinquished pursuant to the provisions of this part, and may presume that the person relinquishing is the child's parent or the parent's designee.

(b) The person receiving the newborn child may request information regarding the parent and newborn child's medical histories, and identifying information regarding the nonrelinquishing parent of the child.

(c) The division shall provide hospitals with medical history forms and stamped envelopes addressed to the division that a hospital may provide to a person relinquishing a child pursuant to the provisions of this part.

(d) Personnel employed by a hospital shall:

(i) provide any necessary medical care to the child and notify the division as soon as possible, but no later than 24 hours after receipt of the child; and

(ii) prepare a birth certificate or foundling birth certificate if parentage is unknown and file with the Office of Vital Records and Statistics.

(e) A hospital and personnel employed by a hospital are immune from any civil or criminal liability arising from accepting a newborn child if the personnel employed by the hospital substantially comply with the provisions of this part and medical treatment is administered according to standard medical practice.

(3) The division shall assume care and custody of the child immediately upon notice from the hospital.

(4) So long as the division determines there is no abuse or neglect of the newborn child, neither the newborn child nor the child's parents are subject to:

(a) the provisions of Part 2 of this chapter, Child Welfare Services;

(b) the investigation provisions contained in Section 62A-4a-409; or

(c) the provisions of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(5) Unless identifying information relating to the nonrelinquishing parent of the newborn child has been provided:

(a) the division shall work with local law enforcement and the Bureau of Criminal Identification within the Department of Public Safety in an effort to ensure that the newborn child has not been identified as a missing child;

(b) the division shall immediately place or contract for placement of the newborn child in a potential adoptive home and, within 10 days after receipt of the child, file a

petition for termination of parental rights in accordance with Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act;

(c) the division shall direct the Office of Vital Records and Statistics to conduct a search for a birth certificate for the child and an Initiation of Proceedings to Establish Paternity Registry for unmarried biological fathers maintained by the Office of Vital Records and Statistics within the Department of Health and provide notice to each potential father identified on the registry. Notice of termination of parental rights proceedings shall be provided in the same manner as is utilized for any other termination proceeding in which the identity of the child's parents is unknown;

(d) if no person has affirmatively identified himself or herself within two weeks after notice is complete and established paternity by scientific testing within as expeditious a time frame as practicable, a hearing on the petition for termination of parental rights shall be scheduled; and

(e) if a nonrelinquishing parent is not identified, relinquishment of a newborn child pursuant to the provisions of this part shall be considered grounds for termination of parental rights of both the relinquishing and nonrelinquishing parents under Section 78A-6-507.

(6) If at any time prior to the adoption, a court finds it is in the best interest of the child, the court shall deny the petition for termination of parental rights.

(7) The division shall provide for, or contract with a licensed child-placing agency to provide for expeditious adoption of the newborn child.

(8) So long as the person relinquishing a newborn child is the child's parent or designee, and there is no abuse or neglect, safe relinquishment of a newborn child in substantial compliance with the provisions of this part is an affirmative defense to any potential criminal liability for abandonment or neglect relating to that relinquishment.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 299, 2008 General Session

62A-4a-901. Legislative purpose.

The purpose of this part is to provide adoption assistance to eligible adoptive families to establish and maintain a permanent adoptive placement for a child who has a special need and who qualifies under state and federal law.

Enacted by Chapter 115, 2001 General Session

62A-4a-902. Definitions.

(1) (a) "Adoption assistance" means direct financial subsidies and support to adoptive parents of a child with special needs or whose need or condition has created a barrier that would prevent a successful adoption.

(b) "Adoption assistance" may include state medical assistance, reimbursement of nonrecurring adoption expenses, or monthly subsidies.

(2) "Child who has a special need" means a child who cannot or should not be returned to the home of his biological parents and who meets at least one of the following conditions:

- (a) the child is five years of age or older;
- (b) the child is under the age of 18 with a physical, emotional, or mental disability; or
- (c) the child is a member of a sibling group placed together for adoption.
- (3) "Monthly subsidy" means financial support to assist with the costs of adopting and caring for a child who has a special need.
- (4) "Nonrecurring adoption expenses" means reasonably necessary adoption fees, court costs, attorney's fees, and other expenses which are directly related to the legal adoption of a child who has a special need.
- (5) "State medical assistance" means the Medicaid program and medical assistance as defined in Subsections 26-18-2(4) and (5).
- (6) "Supplemental adoption assistance" means financial support for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

Amended by Chapter 116, 2006 General Session

62A-4a-903. Eligibility.

- (1) The Division of Child and Family Services shall establish, by rule, eligibility criteria for the receipt of adoption assistance and supplemental adoption assistance.
- (2) Eligibility determination shall be based upon:
 - (a) the needs of the child;
 - (b) the resources available to the child; and
 - (c) the federal requirements of Section 473, Social Security Act.

Amended by Chapter 75, 2009 General Session

62A-4a-904. Adoption assistance.

- (1) Pursuant to federal requirements of 42 U.S.C. Sec. 670 et seq., Social Security Act, the Division of Child and Family Services:
 - (a) shall provide for:
 - (i) payment of nonrecurring adoption expenses for an eligible child who has a special need; and
 - (ii) state medical assistance when required by federal law; and
 - (b) may provide for monthly subsidies for an eligible child who has a special need.
- (2) Payment of nonrecurring adoption expenses may not exceed \$2,000 and shall be limited to costs incurred prior to finalization of an adoption.
- (3) The level of monthly subsidy under Subsection (1)(b) shall be based on:
 - (a) the child's present and long-term treatment and care needs; and
 - (b) the family's ability to meet the needs of the child.
- (4) (a) The level of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet the child's need changes.
- (b) Either the family or the division may initiate changes to the monthly subsidy.

(5) Financial support provided under Subsection (1)(b) may not exceed the maximum foster care payment or residential room and board payment that would be paid at the time the subsidy amount is initiated or revised.

Enacted by Chapter 115, 2001 General Session

62A-4a-905. Supplemental adoption assistance.

(1) The division may, based upon annual legislative appropriations for adoption assistance and division rules, provide supplemental adoption assistance for children who have a special need. Supplemental adoption assistance shall be provided only after all other resources for which a child is eligible have been exhausted.

(2) (a) The department shall, by rule, establish in each region at least one advisory committee to review and make recommendations to the division on individual requests for supplemental adoption assistance. The committee shall be comprised of the following members:

- (i) an adoption expert;
- (ii) an adoptive parent;
- (iii) a division representative;
- (iv) a foster parent; and
- (v) an adoption caseworker.

(b) The division policy required in Subsection (1) shall include a provision which establishes a threshold amount for requests for supplemental adoption assistance that require review by the committee established in this Subsection (2).

Amended by Chapter 75, 2009 General Session

62A-4a-906. Termination or modification of adoption assistance.

(1) Adoption assistance may not be terminated or modified unless the division has given adoptive parents notice and opportunity for a hearing as required in Title 63G, Chapter 4, Administrative Procedures Act.

(2) Adoption assistance shall be terminated if any of the following occur:

- (a) the adoptive parents request termination;
- (b) the child reaches 18 years of age, unless approval has been given by the division to continue beyond the age of 18 due to mental or physical disability, but in no case shall assistance continue after a child reaches 21 years of age;
- (c) the child dies;
- (d) the adoptive parents die;
- (e) the adoptive parent's legal responsibility for the child ceases;
- (f) the state determines that the child is no longer receiving support from the adoptive parents;
- (g) the child marries; or
- (h) the child enters military service.

Amended by Chapter 382, 2008 General Session

62A-4a-907. Interstate compact adoption assistance agreements.

(1) As used in this section:

(a) "Adoption assistance" means financial support to adoptive parents provided under the Adoption Assistance and Child Welfare Act of 1980, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act.

(b) "Adoption assistance agreement" means a written agreement between the division and adoptive parents, or between any other state and adoptive parents, providing for adoption assistance.

(2) The division may develop and negotiate interstate compacts for the provision of medical identification and assistance to adoptive parents who receive adoption assistance. An interstate compact shall include:

(a) a provision for joinder by all states;

(b) a provision for withdrawal from the compact upon written notice to the parties, with a period of one year between the date of the notice and the effective date of withdrawal;

(c) a requirement that each instance of adoption assistance to which the compact applies be covered by a written adoption assistance agreement between the adoptive parents and the agency of the state which initially agrees to provide adoption assistance, and that any agreement is expressly for the benefit of the adopted child and is enforceable by the adoptive parents, and by the state agency providing adoption assistance;

(d) a provision that a child who is the subject of an adoption assistance agreement with another party state, and who subsequently becomes a resident of this state, shall receive medical identification and assistance in this state under the Adoption Assistance and Child Welfare Act of 1980, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act, based on his adoption assistance agreement;

(e) a provision that a child who is the subject of an adoption assistance agreement with the division, and who subsequently becomes a resident of another party state, shall receive medical identification and assistance from that state under the Adoption and Child Welfare Act of 1980, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act, based on his adoption assistance agreement; and

(f) a requirement that the protections of the compact continue for the duration of the adoption assistance and apply to all children and their adoptive parents who receive adoption assistance from a party state other than the state in which they reside.

(3) (a) The division shall provide services to a child who is the subject of an adoption assistance agreement executed by the division, and who is a resident of another state, if those services are not provided by the child's residence state under an interstate compact.

(b) The division may reimburse the adoptive parents upon receipt of evidence of their payment for services for which the child is eligible, which were not paid by the residence state, and are not covered by insurance or other third party medical contract. The services provided under this subsection are those for which there is no federal contribution, or which, if federally aided, are not provided by the residence state.

Renumbered and Amended by Chapter 115, 2001 General Session

62A-4a-1001. Title.

This part is known as the "Management Information System and Licensing Information System."

Enacted by Chapter 77, 2006 General Session

62A-4a-1002. Definitions.

As used in this part:

(1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect" means:

(i) if committed by a person 18 years of age or older:

- (A) chronic abuse;
- (B) severe abuse;
- (C) sexual abuse;
- (D) sexual exploitation;
- (E) abandonment;
- (F) chronic neglect; or
- (G) severe neglect; or

(ii) if committed by a person under the age of 18:

(A) serious physical injury, as defined in Subsection 76-5-109(1), to another child which indicates a significant risk to other children; or

(B) sexual behavior with or upon another child which indicates a significant risk to other children.

(b) "Severe type of child abuse or neglect" does not include:

(i) the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401;

(ii) a person's conduct that:

(A) is justified under Section 76-2-401; or

(B) constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury; or

(iii) a health care decision made for a child by the child's parent or guardian, unless, subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(2) "Significant risk" means a risk of harm that is determined to be significant in accordance with risk assessment tools and rules established by the division that focus on:

- (a) age;
- (b) social factors;
- (c) emotional factors;
- (d) sexual factors;

- (e) intellectual factors;
- (f) family risk factors; and
- (g) other related considerations.

Amended by Chapter 45, 2008 General Session
Amended by Chapter 299, 2008 General Session

**62A-4a-1003. Management Information System -- Requirements --
Contents -- Purpose -- Access.**

(1) (a) The division shall develop and implement a Management Information System that meets the requirements of this section and the requirements of federal law and regulation.

(b) The information and records contained in the Management Information System:

(i) are protected records under Title 63G, Chapter 2, Government Records Access and Management Act; and

(ii) except as provided in Subsections (1)(c) and (d), are available only to a person with statutory authorization under Title 63G, Chapter 2, Government Records Access and Management Act, to review the information and records described in this Subsection (1)(b).

(c) Notwithstanding Subsection (1)(b)(ii), the information and records described in Subsection (1)(b) are available to a person:

(i) as provided under Subsection (6) or Section 62A-4a-1006; or

(ii) who has specific statutory authorization to access the information or records for the purpose of assisting the state with state and federal requirements to maintain information solely for the purpose of protecting minors and providing services to families in need.

(d) Notwithstanding Subsection (1)(b)(ii), the information and records described in Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act, be provided by the division:

(i) to comply with abuse and neglect registry checks requested by other states; and

(ii) to the United States Department of Health and Human Services for purposes of maintaining an electronic national registry of substantiated cases of abuse and neglect.

(2) With regard to all child welfare cases, the Management Information System shall provide each caseworker and the department's office of licensing, exclusively for the purposes of foster parent licensure and monitoring, with a complete history of each child in that worker's caseload, including:

(a) a record of all past action taken by the division with regard to that child and the child's siblings;

(b) the complete case history and all reports and information in the control or keeping of the division regarding that child and the child's siblings;

(c) the number of times the child has been in the custody of the division;

(d) the cumulative period of time the child has been in the custody of the

division;

(e) a record of all reports of abuse or neglect received by the division with regard to that child's parent, parents, or guardian including:

(i) for each report, documentation of the:

(A) latest status; or

(B) final outcome or determination; and

(ii) information that indicates whether each report was found to be:

(A) supported;

(B) unsupported;

(C) substantiated by a juvenile court;

(D) unsubstantiated by a juvenile court; or

(E) without merit;

(f) the number of times the child's parent or parents failed any child and family plan; and

(g) the number of different caseworkers who have been assigned to that child in the past.

(3) The division's Management Information System shall:

(a) contain all key elements of each family's current child and family plan, including:

(i) the dates and number of times the plan has been administratively or judicially reviewed;

(ii) the number of times the parent or parents have failed that child and family plan; and

(iii) the exact length of time the child and family plan has been in effect; and

(b) alert caseworkers regarding deadlines for completion of and compliance with policy, including child and family plans.

(4) With regard to all child protective services cases, the Management Information System shall:

(a) monitor the compliance of each case with:

(i) division rule and policy;

(ii) state law; and

(iii) federal law and regulation; and

(b) include the age and date of birth of the alleged perpetrator at the time the abuse or neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of the alleged perpetrator.

(5) Except as provided in Subsection (6) regarding contract providers and Section 62A-4a-1006 regarding limited access to the Licensing Information System, all information contained in the division's Management Information System is available to the department, upon the approval of the executive director, on a need-to-know basis.

(6) (a) Subject to this Subsection (6), the division may allow its contract providers, court clerks designated by the Administrative Office of the Courts, and the Office of Guardian Ad Litem to have limited access to the Management Information System.

(b) A division contract provider has access only to information about a person who is currently receiving services from that specific contract provider.

(c) (i) Designated court clerks may only have access to information necessary to comply with Subsection 78B-7-202(2).

(ii) The Office of Guardian Ad Litem may access only the information that:

(A) relates to children and families where the Office of Guardian Ad Litem is appointed by a court to represent the interests of the children; and

(B) except as provided in Subsection (6)(d), is entered into the Management Information System on or after July 1, 2004.

(d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of Guardian Ad Litem shall have access to all abuse and neglect referrals about children and families where the office has been appointed by a court to represent the interests of the children, regardless of the date that the information is entered into the Management Information System.

(e) Each contract provider and designated representative of the Office of Guardian Ad Litem who requests access to information contained in the Management Information System shall:

(i) take all necessary precautions to safeguard the security of the information contained in the Management Information System;

(ii) train its employees regarding:

(A) requirements for protecting the information contained in the Management Information System as required by this chapter and under Title 63G, Chapter 2, Government Records Access and Management Act; and

(B) the criminal penalties under Sections 62A-4a-412 and 63G-2-801 for improper release of information; and

(iii) monitor its employees to ensure that they protect the information contained in the Management Information System as required by law.

(f) The division shall take reasonable precautions to ensure that its contract providers comply with the requirements of this Subsection (6).

(7) The division shall take all necessary precautions, including password protection and other appropriate and available technological techniques, to prevent unauthorized access to or release of information contained in the Management Information System.

Amended by Chapter 32, 2009 General Session

62A-4a-1004. Risk assessment training -- Second health care opinion.

(1) The division shall train its child protection workers to apply the risk assessment tools and rules established under Subsection 62A-4a-1002(2).

(2) Nothing in Subsection 62A-4a-1002(1)(b)(iii) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

Enacted by Chapter 77, 2006 General Session

62A-4a-1005. Supported finding of a severe type of child abuse or neglect -- Notation in Licensing Information System -- Juvenile court petition or notice to alleged perpetrator -- Rights of alleged perpetrator -- Juvenile court finding.

(1) If the division makes a supported finding that a person committed a severe type of child abuse or neglect, the division shall:

(a) serve notice of the finding on the alleged perpetrator;

(b) enter the following information into the Licensing Information System created in Section 62A-4a-1006:

(i) the name and other identifying information of the perpetrator with the supported finding, without identifying the person as a perpetrator or alleged perpetrator; and

(ii) a notation to the effect that an investigation regarding the person is pending; and

(c) if the division considers it advisable, file a petition for substantiation within one year of the supported finding.

(2) The notice referred to in Subsection (1)(a):

(a) shall state that:

(i) the division has conducted an investigation regarding alleged abuse or neglect;

(ii) the division has made a supported finding that the alleged perpetrator described in Subsection (1) committed a severe type of child abuse or neglect;

(iii) facts gathered by the division support the supported finding;

(iv) as a result of the supported finding, the alleged perpetrator's name and other identifying information have been listed in the Licensing Information System in accordance with Subsection (1)(b);

(v) the alleged perpetrator may be disqualified from adopting a child, receiving state funds as a child care provider, or being licensed by:

(A) the department;

(B) a human services licensee;

(C) a child care provider or program; or

(D) a covered health care facility;

(vi) the alleged perpetrator has the rights described in Subsection (3); and

(vii) failure to take either action described in Subsection (3)(a) within one year after service of the notice will result in the action described in Subsection (3)(b);

(b) shall include a general statement of the nature of the findings; and

(c) may not include:

(i) the name of a victim or witness; or

(ii) any privacy information related to the victim or a witness.

(3) (a) Upon receipt of the notice described in Subsection (2), the alleged perpetrator has the right to:

(i) file a written request asking the division to review the findings made under Subsection (1);

(ii) except as provided in Subsection (3)(c), immediately petition the juvenile court under Section 78A-6-323; or

(iii) sign a written consent to:

(A) the supported finding made under Subsection (1); and

(B) entry into the Licensing Information System of:

(I) the alleged perpetrator's name; and

(II) other information regarding the supported finding made under Subsection (1).

(b) Except as provided in Subsection (3)(e), the alleged perpetrator's name and the information described in Subsection (1)(b) shall remain in the Licensing Information System:

(i) if the alleged perpetrator fails to take the action described in Subsection (3)(a) within one year after service of the notice described in Subsections (1)(a) and (2);

(ii) during the time that the division awaits a response from the alleged perpetrator pursuant to Subsection (3)(a); and

(iii) until a court determines that the severe type of child abuse or neglect upon which the Licensing Information System entry was based is unsubstantiated or without merit.

(c) The alleged perpetrator has no right to petition the juvenile court under Subsection (3)(a)(ii) if the court previously held a hearing on the same alleged incident of abuse or neglect pursuant to the filing of a petition under Section 78A-6-304 by some other party.

(d) Consent under Subsection (3)(a)(iii) by a child shall be given by the child's parent or guardian.

(e) Regardless of whether an appeal on the matter is pending:

(i) the division shall remove an alleged perpetrator's name and the information described in Subsection (1)(b) from the Licensing Information System if the severe type of child abuse or neglect upon which the Licensing Information System entry was based:

(A) is found to be unsubstantiated or without merit by the juvenile court under Section 78A-6-323; or

(B) is found to be substantiated, but is subsequently reversed on appeal; and

(ii) the division shall place back on the Licensing Information System an alleged perpetrator's name and information that is removed from the Licensing Information System under Subsection (3)(e)(i) if the court action that was the basis for removing the alleged perpetrator's name and information is subsequently reversed on appeal.

(4) Upon the filing of a petition under Subsection (1)(c), the juvenile court shall make a finding of substantiated, unsubstantiated, or without merit as provided in Subsections 78A-6-323(1) and (2).

(5) Service of the notice described in Subsections (1)(a) and (2):

(a) shall be personal service in accordance with Utah Rules of Civil Procedure, Rule 4; and

(b) does not preclude civil or criminal action against the alleged perpetrator.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 59, 2008 General Session

Amended by Chapter 299, 2008 General Session

62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding -- Protected record -- Access -- Criminal penalty.

(1) (a) The division shall maintain a sub-part of the Management Information System established pursuant to Section 62A-4a-1003, to be known as the Licensing Information System, to be used:

- (i) for licensing purposes; or
- (ii) as otherwise specifically provided for by law.

(b) The Licensing Information System shall include only the following information:

- (i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);
- (ii) consented-to supported findings by alleged perpetrators under Subsection 62A-4a-1005(3)(a)(iii); and
- (iii) the information in the licensing part of the division's Management Information System as of May 6, 2002.

(2) Notwithstanding Subsection (1), the department's access to information in the Management Information System for the licensure and monitoring of foster parents is governed by Sections 62A-4a-1003 and 62A-2-121.

(3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the juvenile court under Section 78A-6-323, the division shall:

- (a) promptly amend the Licensing Information System; and
- (b) enter the information in the Management Information System.

(4) (a) Information contained in the Licensing Information System is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding the disclosure provisions of Title 63G, Chapter 2, Government Records Access and Management Act, the information contained in the Licensing Information System may only be used or disclosed as specifically provided in this chapter and Section 62A-2-121.

(c) The information described in Subsection (4)(b) is accessible only to:

- (i) the Office of Licensing within the department:
 - (A) for licensing purposes; or
 - (B) as otherwise specifically provided for by law;
- (ii) the division to:
 - (A) screen a person at the request of the Office of Guardian Ad Litem:
 - (I) at the time that person seeks a paid or voluntary position with the Office of Guardian Ad Litem; and
 - (II) on an annual basis, throughout the time that the person remains with the Office of Guardian Ad Litem; and
 - (B) respond to a request for information from a person whose name is listed in the Licensing Information System;
- (iii) persons designated by the Department of Health and approved by the Department of Human Services, only for the following purposes:
 - (A) licensing a child care program or provider; or
 - (B) determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child, has a supported finding of a severe type of child abuse or neglect;
- (iv) persons designated by the Department of Workforce Services and approved

by the Department of Human Services for the purpose of qualifying child care providers under Section 35A-3-310.5; and

(v) the department, as specifically provided in this chapter.

(5) The persons designated by the Department of Health under Subsection (4)(c)(iii) and the persons designated by the Department of Workforce Services under Subsection (4)(c)(iv) shall adopt measures to:

(a) protect the security of the Licensing Information System; and

(b) strictly limit access to the Licensing Information System to those persons designated by statute.

(6) All persons designated by statute as having access to information contained in the Licensing Information System shall be approved by the Department of Human Services and receive training from the department with respect to:

(a) accessing the Licensing Information System;

(b) maintaining strict security; and

(c) the criminal provisions of Sections 62A-4a-412 and 63G-2-801 pertaining to the improper release of information.

(7) (a) A person, except those authorized by this chapter, may not request another person to obtain or release any other information in the Licensing Information System to screen for potential perpetrators of abuse or neglect.

(b) A person who requests information knowing that it is a violation of this Subsection (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63G-2-801.

Amended by Chapter 32, 2009 General Session

62A-4a-1007. False reports -- Penalties.

(1) The division shall send a certified letter to any person who submits a report of abuse or neglect that is placed into or included in any part of the Management Information System, if the division determines, at the conclusion of its investigation, that:

(a) the report is false;

(b) it is more likely than not that the person knew the report was false at the time that person submitted the report; and

(c) the reporting person's address is known or reasonably available.

(2) The letter shall inform the reporting person of:

(a) the division's determination made under Subsection (1);

(b) the penalty for submitting false information under Section 76-8-506 and other applicable laws; and

(c) the obligation of the division to inform law enforcement and the person alleged to have committed abuse or neglect:

(i) in the present instance if law enforcement considers an immediate referral of the reporting person to law enforcement to be justified by the facts; or

(ii) if the reporting person submits a subsequent false report involving the same alleged perpetrator or victim.

(3) The division may inform law enforcement and the alleged perpetrator of a

report for which a letter is required to be sent under Subsection (1), if an immediate referral is justified by the facts.

(4) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (1) if a second letter is sent to the reporting person involving the same alleged perpetrator or victim.

(5) The division shall determine, in consultation with law enforcement:

(a) what information should be given to an alleged perpetrator relating to a false report; and

(b) whether good cause exists, as defined by the division by rule, for not informing an alleged perpetrator about a false report.

(6) Nothing in this section may be construed as requiring the division to conduct an investigation beyond what is described in Subsection (1), to determine whether or not a report is false.

Amended by Chapter 299, 2008 General Session

62A-4a-1008. Timeframes for deletion of specified information or reports.

(1) Unless the executive director determines that there is good cause for keeping a report of abuse or neglect in the Management Information System, based on standards established by rule, the division shall delete any reference to:

(a) a report that is without merit, if no subsequent report involving the same alleged perpetrator has occurred within one year; or

(b) a report that is determined by a court of competent jurisdiction to be unsubstantiated or without merit, if no subsequent report involving the same alleged perpetrator has occurred within five years.

(2) (a) The division shall maintain a separation of reports as follows:

(i) those that are supported;

(ii) those that are unsupported;

(iii) those that are without merit;

(iv) those that are unsubstantiated under the law in effect prior to May 6, 2002;

(v) those that are substantiated under the law in effect prior to May 6, 2002; and

(vi) those that are consented-to supported findings under Subsection 62A-4a-1005(3)(a)(iii).

(b) Only persons with statutory authority have access to information contained in any of the reports identified in Subsection (2)(a).

Renumbered and Amended by Chapter 77, 2006 General Session

62A-4a-1009. Notice and opportunity to challenge supported finding in Management Information System -- Right of judicial review.

(1) (a) Except as provided in Subsection (2), the division shall send a notice of agency action to a person with respect to whom the division makes a supported finding. In addition, if the alleged perpetrator is under the age of 18, the division shall:

(i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and

(ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that lives at a different address, unless there is good cause, as defined by rule, for not sending a notice to a parent or guardian.

(b) Nothing in this section may be construed as affecting:

(i) the manner in which the division conducts an investigation; or

(ii) the use or effect, in any other setting, of a supported finding by the division at the completion of an investigation for any purpose other than for notification under Subsection (1) (a).

(2) Subsection (1) does not apply to a person who has been served with notice under Subsection 62A-4a-1005(1)(a).

(3) The notice described in Subsection (1) shall state:

(a) that the division has conducted an investigation regarding alleged abuse, neglect, or dependency;

(b) that the division has made a supported finding of abuse, neglect, or dependency;

(c) that facts gathered by the division support the supported finding;

(d) that the person has the right to request:

(i) a copy of the report; and

(ii) an opportunity to challenge the supported finding by the division; and

(e) that failure to request an opportunity to challenge the supported finding within 30 days of receiving the notice will result in an unappealable supported finding of abuse, neglect, or dependency unless the person can show good cause for why compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.

(4) (a) A person may make a request to challenge a supported finding within 30 days of a notice being received under this section.

(b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

(5) (a) In an adjudicative proceeding held pursuant to this section, the division shall have the burden of proving, by a preponderance of the evidence, that abuse, neglect, or dependency occurred and that the alleged perpetrator was substantially responsible for the abuse or neglect that occurred.

(b) Any party shall have the right of judicial review of final agency action, in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(c) Proceedings for judicial review of a final agency action under this section shall be closed to the public.

(d) The Judicial Council shall make rules that ensure the confidentiality of the proceedings described in Subsection (5)(c) and the records related to the proceedings.

(6) Except as otherwise provided in this chapter, an alleged perpetrator who, after receiving notice, fails to challenge a supported finding in accordance with this section:

(a) may not further challenge the finding; and

(b) shall have no right to:

(i) agency review of the finding;

- (ii) an adjudicative hearing on the finding; or
- (iii) judicial review of the finding.

(7) (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a request under Subsection (4) to challenge a supported finding if a court of competent jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which was also the subject of the supported finding.

(b) Subsection (7)(a) does not apply to pleas in abeyance or diversion agreements.

(c) An adjudicative proceeding under Subsection (5) may be stayed during the time a judicial action on the same matter is pending.

(8) Pursuant to Section 78A-6-323, an adjudicative proceeding on a supported finding of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined in the juvenile court with an adjudicative proceeding on a supported finding of a severe type of child abuse or neglect.

Amended by Chapter 87, 2008 General Session
Amended by Chapter 299, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-4a-1010. Notice and opportunity for court hearing for persons listed in Licensing Information System.

(1) Persons whose names were listed on the Licensing Information System as of May 6, 2002 and who have not been the subject of a court determination with respect to the alleged incident of abuse or neglect may at any time:

(a) request review by the division of their case and removal of their name from the Licensing Information System pursuant to Subsection (3); or

(b) file a petition for an evidentiary hearing and a request for a finding of unsubstantiated or without merit.

(2) Subsection (1) does not apply to an individual who has been the subject of any of the following court determinations with respect to the alleged incident of abuse or neglect:

- (a) conviction;
- (b) adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996;
- (c) plea of guilty;
- (d) plea of guilty with a mental illness; or
- (e) no contest.

(3) If an alleged perpetrator listed on the Licensing Information System prior to May 6, 2002, requests removal of the alleged perpetrator's name from the Licensing Information System, the division shall, within 30 days:

(a) (i) review the case to determine whether the incident of alleged abuse or neglect qualifies as:

- (A) a severe type of child abuse or neglect;
- (B) chronic abuse; or
- (C) chronic neglect; and

(ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect described in Subsections (3)(a)(i)(A) through (C), remove the alleged perpetrator's name from the Licensing Information System; or

(b) determine whether to file a petition for substantiation.

(4) If the division decides to file a petition, that petition must be filed no more than 14 days after the decision.

(5) The juvenile court shall act on the petition as provided in Subsection 78A-6-323(3).

(6) If a person whose name appears on the Licensing Information System prior to May 6, 2002 files a petition pursuant to Section 78A-6-323 during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the court shall hear the matter on an expedited basis.

Amended by Chapter 366, 2011 General Session